2020

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued December 2020

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2020 REGULAR SESSION
OF THE LEGISLATURE

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SUPPLEMENTING

Volume 17

Title 77

(As Revised 2018)

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By the Editorial Staff of the Publisher

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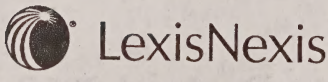

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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December 2020 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 77. Public Utilities and Carriers

CHAPTER 5. ELECTRIC POWER

ARTICLE 19. MISSISSIPPI ELECTRIC COOPERATIVES BROADBAND COVID-19 ACT.

SEC.

77-5-901. Short Title.

77-5-903. Legislative findings and declarations; Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund created; Covid-19 Broadband Provider Grant Program Fund created; definitions; transfer of unobligated monies to Unemployment Compensation Fund.

77-5-905. Purpose of projects applied for by electric cooperatives or broadband providers; identification of unserved or underserved census blocks; electric cooperative's projects to be considered pilot or special purpose projects; applicants receiving grant monies to provide matching dollar for dollar nongrant monies toward projects.

77-5-907. Public Utilities Application Fund created; source of funds; unexpended monies; use of monies.

77-5-909. Application for grant programs; application fee; review of primary application; distribution of approved grants; criteria for determination of multiple projects including common census blocks; amended applications; ranking of primary applications for overdrawn grant funds; secondary and tertiary applications.

77-5-911. Monthly project status reports; requisite information; filing notice of project completion; field or onsite audits, engineering reviews, or requests for additional information to ensure compliance with article; financial information confidential and proprietary; written notice of compliance with article; noncompliant applicants.

CHAPTER 17. MISSISSIPPI BROADBAND ENABLING ACT

77-17-1. Short title.

77-17-3. Definitions.

77-17-5. Electric cooperatives authorized to establish, acquire, own broadband affiliates, allow broadband affiliates or unaffiliated broadband operators to operate broadband system on their electric delivery system, and charge affiliates certain fees; restrictions on use of electric energy sales revenues; economic feasibility study required before electric cooperatives offer broadband services.

77-17-7. No expansion of regulatory authority of state agencies, instrumentalities or political subdivisions beyond state or federal laws and regulations in place on January 30, 2019.

77-17-9. Electric cooperatives prohibited from: allowing use of electric delivery system by affiliate to diminish reliability of the system, requiring purchase of broadband services from affiliate as condition of receiving electric energy from the cooperative, and disconnecting electric service for nonpayment of broadband services provided by affiliate.

Schedule of New Sections

Sec.

77-17-11. Use of cooperative's electric delivery system for provision of broadband services by affiliate not considered burden on real property on which electric delivery system is located; landowner's remedies for damages caused by use of electric delivery system by affiliate.

77-17-13. Liberal construction of chapter.

77-17-15. Annual audit of compliance with chapter; notice to members of election of board of directors, meetings, and election results.

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME SEVENTEEN

TITLE 77.
PUBLIC UTILITIES AND CARRIERS

Chapter 1.	Public Service Commission.	77-1-1
Chapter 3.	Regulation of Public Utilities.	77-3-1
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Chapter 13.	Regulation of Excavations Near Underground Utility Facilities.	77-13-1
Chapter 17.	Mississippi Broadband Enabling Act.	77-17-1

CHAPTER 1.
PUBLIC SERVICE COMMISSION

Sec.

77-1-15. Employment and duties of executive secretary; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2024].

§ 77-1-1. Creation of commission; terms, compensation and qualifications of commissioners [Repealed effective December 31, 2024].

A public service commission, hereinafter referred to in this chapter as the commission, is hereby created, consisting of three (3) members, one (1) to be elected from each of the three (3) Supreme Court districts by the qualified electors of such district. Elections for such officers shall be held in the general election in November 1959, and every four (4) years thereafter, and the terms of office of the three (3) commissioners elected at the general election in November 1959 shall expire on December 31, 1963.

The commissioners shall each receive a yearly salary fixed by the Legislature, payable monthly.

The commissioners shall each possess the qualifications prescribed for the Secretary of State. The commissioners shall not operate, own any stock in, or be in the employment of any telephone company, gas or electric utility company, or any other public utility that shall come under their jurisdiction or supervision.

HISTORY: Codes, 1942, § 7688; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 1; Laws, 1989, ch. 573, § 1; reenacted, Laws, 1990, ch. 530, § 1; reenacted and amended, Laws, 1993, ch. 616, § 1; reenacted without change, Laws, 1996, ch. 526, § 1; reenacted without change, Laws, 1998, ch. 303, § 1; reenacted without change, Laws, 2002, ch. 452, § 1; reenacted without change, Laws, 2006, ch. 386, § 1; reenacted without change, Laws, 2008, ch. 406, § 1; reenacted without change, Laws, 2011, ch. 456, § 1; reenacted without change, Laws, 2012, ch. 542, § 1; reenacted without change, Laws, 2013, ch. 332, § 1; reenacted without change, Laws, 2016, ch. 437, § 1, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 1, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 387, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in the last sentence of the last paragraph, deleting "common or contract carrier by motor vehicle" following "employment of any."

§ 77-1-3. Seal [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, § 7695; Laws, 1938, ch. 139; reenacted without change, Laws, 1982, ch. 382, § 2; reenacted, Laws, 1990, ch. 530, § 2; reenacted without change, Laws, 1993, ch. 616, § 2; reenacted without change, Laws, 1996, ch. 526, § 2; reenacted without change, Laws, 1998, ch. 303, § 2; reenacted without change, Laws, 2002, ch. 452, § 2; reenacted without change, Laws, 2006, ch. 386, § 2; reenacted without change, Laws, 2008, ch. 406, § 2; reenacted without change, Laws, 2011, ch. 456, § 2; reenacted without change, Laws, 2012, ch. 542, § 2; reenacted without change, Laws, 2013, ch. 332, § 2; reenacted without change, Laws, 2016, ch. 437, § 2, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 2, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 2, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 2. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-5. Office, meetings and minutes of commission [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, §§ 7688, 7696; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 3; reenacted, Laws, 1990, ch. 530, § 3; reenacted without change, Laws, 1993, ch. 616, § 3; reenacted without change, Laws, 1996, ch. 526, § 3; reenacted without change, Laws, 1998, ch. 303, § 3; reenacted without change, Laws, 2002, ch. 452, § 3; reenacted without change, Laws, 2006, ch. 386, § 3; reenacted without change, Laws, 2008, ch. 406, § 3; reenacted without change, Laws, 2011, ch. 456, § 3; reenacted without change, Laws, 2012, ch. 542, § 3; reenacted without change, Laws, 2013, ch. 332, § 3; reenacted without change, Laws, 2016, ch. 437, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 3, eff from and after July 1, 2018;

reenacted without change, Laws, 2020, ch. 387, § 3, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 3. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-6. Establishment of Public Service Commission Regulation Fund; administration; annual audit; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2024].

HISTORY: Laws, 1987, ch. 343, § 1; reenacted and amended, Laws, 1990, ch. 530, § 4; Laws, 1991, ch. 525, § 3; reenacted without change, Laws, 1993, ch. 616, § 4; Laws, reenacted without change, Laws, 1996, ch. 526, § 4; reenacted without change, Laws, 1998, ch. 303, § 4; reenacted without change, Laws, 2002, ch. 452, § 4; reenacted without change, Laws, 2006, ch. 386, § 4; reenacted without change, Laws, 2008, ch. 406, § 4; reenacted without change, Laws, 2011, ch. 456, § 4; reenacted without change, Laws, 2012, ch. 542, § 4; reenacted without change, Laws, 2013, ch. 332, § 4; reenacted without change, Laws, 2016, ch. 437, § 4; Laws, 2016, ch. 459, § 49; Laws, 2017, 1st Ex Sess, ch. 7, § 37, eff from and after passage (approved June 23, 2017); reenacted without change, Laws, 2018, ch. 402, § 4, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 4, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 4. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-11. Acceptance by or offering to commission members, candidates or employees of gifts, passes, campaign contributions or other benefits [Repealed effective December 31, 2024].

(1) It shall be unlawful for any public service commissioner, any candidate for public service commissioner, or any employee of the Public Service Commission or Public Utilities Staff to knowingly accept any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever, either directly or indirectly, from any person interested as owner, agent or representative, or from any person acting in any respect for such owner, agent or representative of any telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission. Any person found guilty of violating the provisions of this subsection shall immediately forfeit his or her office or position and shall be fined not less than Five Thousand Dollars ($5,000.00), imprisoned in the State Penitentiary for not less than one (1) year, or both.

(2) It shall be unlawful for any person interested as owner, agent or representative, or any person acting in any respect for such owner, agent or

representative of any telephone company, gas or electric utility, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission to offer any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever to any public service commissioner, any candidate for public service commissioner or any employee of the Public Service Commission or Public Utilities Staff. Any party found guilty of violating the provisions of this subsection shall be fined not less than Five Thousand Dollars ($5,000.00), or imprisoned in the State Penitentiary for not less than one (1) year, or both.

(3) For purposes of this section, the term "emolument" shall include salary, donations, contributions, loans, stock tips, vacations, trips, honorarium, directorships or consulting posts. Expenses associated with social occasions afforded public servants shall not be deemed a gift, emolument or other pecuniary benefit as defined in Section 25-4-103(k), Mississippi Code of 1972.

(4) For purposes of this section, a person who is a member of a water, gas, electric or other cooperative association regulated by the Public Service Commission shall not, by virtue of such membership, be deemed an owner, agent or representative of such association unless such person is acting in any respect for or as an owner, agent or representative of such association; nor shall a person who owns less than one-half of one percent (1/2 of 1%) in stock, the value thereof not to exceed Ten Thousand Dollars ($10,000.00), of any public utility that is regulated by the Public Service Commission, or of any holding company of such public utility, by virtue of such ownership, be deemed an owner, agent or representative of such public utility unless such person is acting in any respect for or as an owner, agent or representative of such public utility.

HISTORY: Codes, 1892, § 4274; 1906, § 4827; Hemingway's 1917, § 7612; 1930, § 7026; 1942, §§ 7688, 7807; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 6; reenacted and amended, Laws, 1990, ch. 530, § 5; Laws, 1991, ch. 586, § 1; reenacted and amended, Laws, 1993, ch. 616, § 5; reenacted without change, Laws, 1996, ch. 526, § 5; reenacted without change, Laws, 1998, ch. 303, § 5; reenacted without change, Laws, 2002, ch. 452, § 5; reenacted without change, Laws, 2006, ch. 386, § 5; reenacted without change, Laws, 2008, ch. 406, § 5; reenacted without change, Laws, 2011, ch. 456, § 5; reenacted without change, Laws, 2012, ch. 542, § 5; reenacted without change, Laws, 2013, ch. 332, § 5; reenacted without change, Laws, 2016, ch. 437, § 5, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 5, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 387, § 5, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in the first sentence of (1) and (2), deleting "common or contract carrier by motor vehicle" following "agent or representative of any."

OPINIONS OF THE ATTORNEY GENERAL

Facts of each case would determine if lawyer or other person could be classified as representative or agent of regulated entity; fact that lawyer or engineer has at some point in his or her professional career performed professional services for regulated entity would not per se make that lawyer or engineer representative or agent of that entity. Robinson, May 22, 1990, A.G. Op. #90-0334.

The Attorney General is unable to state that Section 601 of the Federal Aviation Administration Authorization Act of 1994 preempts the enforcement of the criminal provisions of this section. Hebert, May 18, 1995, A.G. Op. #95-0007.

Under this section, a vendor of goods which sells to the public and also makes sales to a public utility, and which is not interested as an owner, agent or representative of a public utility or acting for an owner, agent or representative of a public utility, may legally contribute to a candidate for the MPSC. Hebert, May 18, 1995, A.G. Op. #95-0007.

Under this section, an attorney who performs services for a public utility, is a person ". . . interested as a . . . representative . . ." of the public utility and consequently is an individual who is prohibited from making, either directly or indirectly, a contribution to a candidate for the MPSC whether or not that attorney has multiple clients. Hebert, May 18, 1995, A.G. Op. #95-0007.

Since interstate pipeline companies do not come within the jurisdiction or supervision of the Public Service Commission, these companies or their representatives may legally make campaign contributions to Public Service Commissioners or candidates for Public Service Commissioner. See Section 77-3-5. Hebert, December 6, 1995, A.G. Op. #95-0768.

Campaign contributions legally received from regulated utility companies during a prior Mississippi House of Representatives campaign, that were not spent during that campaign, can be used in a prospective upcoming campaign for Public Service Commissioner even though they would otherwise be prohibited contributions, so long as they were made prior to any discussion or consideration of running for Public Service Commissioner and prior to becoming a candidate for the office, as described in Miss. Code Ann. § 77-1-11. Ellington, February 9, 2007, A.G. Op. #07-00071, 2007 Miss. AG LEXIS 20.

§ 77-1-15. Employment and duties of executive secretary; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2024].

(1) There shall be an executive secretary of the commission, hereinafter referred to in this chapter as the secretary, to be appointed by the commission, by and with the advice and consent of the Senate, for the term of the commissioners. The secretary must have the same qualifications as the commissioners and shall be subject to the same disqualifications and to like penalties, except that he shall not be liable to impeachment. He shall receive a salary fixed by the Legislature. He shall take the oath of office and shall be removable at the pleasure of the commission, which may fill any vacancy until the Senate confirms a successor. The secretary shall make bond as provided for other state officers, in the sum of Ten Thousand Dollars ($10,000.00), conditioned upon the faithful performance of the duties of his office.

(2) The secretary shall collect all fees and penalties collected by or paid to the commission, and shall cover the same into the State Treasury.

(3) The secretary of the commission shall be the custodian of all records,

documents, and the seal of the commission. He shall issue all citations, subpoenas and other rightful orders and documents, and perform all other duties usually required of such officer, and as required by the commission.

(4) It shall be the duty and responsibility of the secretary to supervise and manage the offices and staff of the Public Service Commission and formulate written policies and procedures for the effective and efficient operation of the office and present these policies and procedures to the board for promulgation.

(5) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Codes, 1942, § 7689; Laws, 1938, ch. 139; Laws, 1946, ch. 352, § 2; Laws, 1948, ch. 418, § 1; Laws, 1952, ch. 330, § 2; Laws, 1958, ch. 350, § 1; Laws, 1960, ch. 394, § 2; Laws, 1966, ch. 445, § 24; reenacted without change, Laws, 1982, ch. 389, § 8; Laws, 1987, ch. 343, § 2; reenacted and amended, Laws, 1990, ch. 530, § 6; reenacted without change, Laws, 1993, ch. 616, § 6; reenacted without change, Laws, 1996, ch. 526, § 6; reenacted without change, Laws, 1998, ch. 303, § 6; reenacted without change, Laws, 2002, ch. 452, § 6; reenacted without change, Laws, 2006, ch. 386, § 6; reenacted without change, Laws, 2008, ch. 406, § 6; reenacted without change, Laws, 2011, ch. 456, § 6; reenacted without change, Laws, 2012, ch. 542, § 6; reenacted without change, Laws, 2013, ch. 332, § 6; reenacted without change, Laws, 2016, ch. 437, § 6; Laws, 2016, ch. 459, § 50, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 6, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 387, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in (2), deleting "and all fees and penalties collected under the Mississippi Motor Carrier Regulatory Law of 1938 shall be covered into the Public Service Commission Regulation Fund" at the end, and making a related punctuation change.

§§ 77-1-17 through 77-1-21. Repealed.

Repealed by Laws, 2020, ch. 387, §§ 23–25, respectively, eff from and after July 1, 2020.

§ 77-1-17. [Codes, 1942, § 7690; Laws, 1938, ch. 139; Laws, 1946, ch. 352, § 3; Laws, 1948, ch. 418, § 2; Laws, 1952, ch. 330, § 3; Laws, 1958, ch. 350, § 2; Laws, 1966, ch. 445, § 25; reenacted without change, Laws, 1982, ch. 389, § 9; reenacted and amended, Laws, 1990, ch. 530, § 7; reenacted without change, Laws, 1993, ch. 616, § 7; reenacted without change, Laws, 1996, ch. 526, § 7; reenacted without change, Laws, 1998, ch. 303, § 7; reenacted the section without change, Laws, 2002, ch. 452, § 7; reenacted without change, Laws, 2006, ch. 386, § 7; reenacted without change, Laws, 2008, ch. 406, § 7; reenacted without change, Laws, 2011, ch. 456, § 7; reenacted without change, Laws, 2012, ch. 542, § 7; reenacted without change, Laws, 2013, ch. 332, § 7; reenacted without change, Laws, 2016, ch. 437, § 7, eff from and after July 1,

2016; reenacted without change, Laws, 2018, ch. 402, § 7, eff from and after July 1, 2018.]

§ 77-1-19. [Codes, 1942, § 7692; Laws, 1938, ch. 139; Laws, 1944, ch. 268, § 2; Laws, 1946, ch. 352, § 5; Laws, 1948, chs. 327, § 10, 418, § 3; Laws, 1952, ch. 330, § 4; Laws, 1958, ch. 350, § 3; Laws, 1960, ch. 394, § 3; Laws, 1966, ch. 445, § 26; Laws, 1968, ch. 535, § 1; Laws, 1974, ch. 311; Laws, 1978, ch. 377, § 1; reenacted, Laws, 1982, ch. 389, § 10; reenacted and amended, Laws, 1990, ch. 530, § 8; reenacted without change, Laws, 1996, ch. 526, § 8; reenacted without change, Laws, 1998, ch. 303, § 8; reenacted without change, Laws, 2002, ch. 452, § 8; reenacted without change, Laws, 2006, ch. 386, § 8; reenacted without change, Laws, 2008, ch. 406, § 8; reenacted without change, Laws, 2011, ch. 456, § 8; reenacted without change, Laws, 2012, ch. 542, § 8; reenacted without change, Laws, 2013, ch. 332, § 8; reenacted without change, Laws, 2016, ch. 437, § 8, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 8, eff from and after July 1, 2018.]

§ 77-1-21. [Codes, 1942, § 7692-01; Laws, 1958, ch. 505, § 2; Laws, 1962, ch. 512, § 1; Laws, 1966, ch. 445, § 27; Laws, 1982, ch. 389, § 11; reenacted, Laws, 1990, ch. 530, § 9; reenacted, Laws, 1993, ch. 616, § 8; reenacted without change, Laws, 1996, ch. 526, § 9; reenacted without change, Laws, 1998, ch. 303, § 9; reenacted without change, Laws, 2002, ch. 452, § 9; Laws, 2004, ch. 595, § 22; reenacted without change, Laws, 2006, ch. 386, § 9; reenacted without change, Laws, 2008, ch. 406, § 9; reenacted without change, Laws, 2011, ch. 456, § 9; reenacted without change, Laws, 2012, ch. 542, § 9; reenacted without change, Laws, 2013, ch. 332, § 9; reenacted without change, Laws, 2016, ch. 437, § 9, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 9, eff from and after July 1, 2018.]

Editor's Notes — Former § 77-1-17 authorized the Public Service Commission to employ a competent rate expert and an assistant rate expert.

Former § 77-1-19 authorized the Public Service Commission to employ personnel to implement the Motor Carrier Regulatory Law (§ 77-7-1 et seq.).

Former § 77-1-21 authorized the Department of Transportation to employ an enforcement officer and inspectors to implement the Motor Carrier Regulatory Law (§ 77-7-1 et seq.).

§ 77-1-25. Use of commission property and political activity regulated [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, §§ 7692-07, 7806-07; Laws, 1958, ch. 505, § 8; Laws, 1970, ch. 429, § 7; reenacted without change, Laws, 1982, ch. 389, § 13; reenacted, Laws, 1990, ch. 530, § 11; reenacted and amended, Laws, 1993, ch. 616, § 9; reenacted without change, Laws, 1996, ch. 526, § 10; reenacted without change, Laws, 1998, ch. 303, § 10; reenacted without change, Laws, 2002, ch. 452, § 10; reenacted without change, Laws, 2006, ch. 386, § 10; reenacted without change, Laws, 2008, ch. 406, § 10; reenacted without change, Laws, 2011, ch. 456, § 10; reenacted without change, Laws, 2012, ch. 542, § 10; reenacted without change, Laws, 2013, ch. 332, § 10; reenacted without change, Laws, 2016, ch. 437, § 10, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 10, eff from and after July 1,

2018; reenacted without change, Laws, 2020, ch. 387, § 7, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 7. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-27. Payment of salaries [Repealed effective December 31, 2024].

All commission employees provided for in this chapter shall be paid out of the appropriations made to defray the expenses of the commission, upon requisitions and warrants in the same manner provided by law for the disbursements of appropriations for the commission. An itemized account shall be kept of all receipts and expenditures and shall be reported to the Legislature by the commission.

HISTORY: Codes, 1942, §§ 7691, 7693, 7806-09; Laws, 1938, ch. 139; Laws, 1944, ch. 268, §§ 1, 2; Laws, 1946, ch. 352, §§ 4, 5; Laws, 1948, ch. 327, § 11; ch. 417, § 2; Laws, 1952, ch. 330, § 5; Laws, 1956, ch. 371, §§ 2, 3; Laws, 1958, ch. 350, § 4; Laws, 1960, ch. 394, § 4; Laws, 1966, ch. 445, § 28; Laws, 1970, ch. 429, § 9; reenacted without change, Laws, 1982, ch. 389, § 14; Laws, 1987, ch. 343, § 3; reenacted and amended, Laws, 1990, ch. 530, § 12; Laws, 1991, ch. 525, § 4; Laws, 1992, ch. 496, § 59; reenacted, Laws, 1993, ch. 616, § 10; reenacted without change, Laws, 1996, ch. 526, § 11; reenacted without change, Laws, 1998, ch. 303, § 11; reenacted without change, Laws, 2002, ch. 452, § 11; reenacted without change, Laws, 2006, ch. 386, § 11; reenacted without change, Laws, 2008, ch. 406, § 11; reenacted without change, Laws, 2011, ch. 456, § 11; reenacted without change, Laws, 2012, ch. 542, § 11; reenacted without change, Laws, 2013, ch. 332, § 11; reenacted without change, Laws, 2016, ch. 437, § 11, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 11, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 387, § 8, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in the first sentence, deleting "and the reasonable and necessary expenses of the administration of the duties imposed on the commission by the Motor Carrier Regulatory Law of 1938" following "in this chapter."

§ 77-1-29. Payments to and disbursements from Public Service Commission Regulation Fund; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, § 7694; Laws, 1938, ch. 139; Laws, 1944, ch. 268, § 3; Laws, 1946, ch. 352, § 5; Laws, 1948, ch. 327, § 12; Laws, 1952, ch. 330, § 6; Laws, 1958, ch. 505, § 11; Laws, 1962, ch. 512, § 2; Laws, 1966, ch. 541, § 2; Laws, 1968, ch. 536; Laws, 1972, ch. 472, § 1; Laws, 1974, ch. 312; Laws, 1978, ch. 518, § 1; Laws, 1981, ch. 345, § 1; reenacted, Laws, 1982, ch. 389, § 15; Laws, 1983, ch. 530; Laws, 1987, ch. 343, § 4; reenacted and amended, Laws, 1990, ch. 530, § 13; Laws, 1991, ch. 525, § 5; reenacted without change, Laws, 1993, ch. 616, § 11;

reenacted without change, Laws, 1996, ch. 526, § 12; reenacted without change, Laws, 1998, ch. 303, § 12; reenacted without change, Laws, 2002, ch. 452, § 12; reenacted without change, Laws, 2006, ch. 386, § 12; reenacted without change, Laws, 2008, ch. 406, § 12; reenacted without change, Laws, 2011, ch. 456, § 12; reenacted without change, Laws, 2012, ch. 542, § 12; reenacted without change, Laws, 2013, ch. 332, § 12; reenacted without change, Laws, 2016, ch. 437, § 12; Laws, 2016, ch. 459, § 51, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 12, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 9, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 9. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-31. Docket of petitions and complaints [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4280; 1906, § 4832; Hemingway's 1917, § 7617; 1930, § 7031; 1942, § 7808; reenacted without change, Laws, 1982, ch. 389, § 16; reenacted, Laws, 1990, ch. 530, § 14; reenacted without change, Laws, 1993, ch. 616, § 12; reenacted without change, Laws, 1996, ch. 526, § 13; reenacted without change, Laws, 1998, ch. 303, § 13; reenacted without change, Laws, 2002, ch. 452, § 13; reenacted without change, Laws, 2006, ch. 386, § 13; reenacted without change, Laws, 2008, ch. 406, § 13; reenacted without change, Laws, 2011, ch. 456, § 13; reenacted without change, Laws, 2012, ch. 542, § 13; reenacted without change, Laws, 2013, ch. 332, § 13; reenacted without change, Laws, 2016, ch. 437, § 13, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 13, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 10, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 10. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-33. Process for witnesses; penalty for failure to testify [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4285; 1906, § 4837; Hemingway's 1917, § 7622; 1930, § 7034; 1942, § 7811; reenacted without change, Laws, 1982, ch. 389, § 17; reenacted and amended, Laws, 1990, ch. 530, § 15; reenacted without change, Laws, 1993, ch. 616, § 13; reenacted without change, Laws, 1996, ch. 526, § 14; reenacted without change, Laws, 1998, ch. 303, § 14; reenacted without change, Laws, 2002, ch. 452, § 14; reenacted without change, Laws, 2006, ch. 386, § 14; reenacted without change, Laws, 2008, ch. 406, § 14; reenacted without change, Laws, 2011, ch. 456, § 14; reenacted without change, Laws, 2012, ch. 542, § 14; reenacted without change, Laws, 2013, ch. 332, § 14; reenacted without change, Laws, 2016, ch. 437, § 14, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 14, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 11, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 11. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-35. Administration of oaths; taking of affidavits; examination of witnesses; perjury [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4279; 1906, § 4831; Hemingway's 1917, § 7616; 1930, § 7035; 1942, § 7812; reenacted without change, Laws, 1982, ch. 389, § 18; reenacted, Laws, 1990, ch. 530, § 16; reenacted without change, Laws, 1993, ch. 616, § 14; reenacted without change, Laws, 1996, ch. 526, § 15; reenacted without change, Laws, 1998, ch. 303, § 15; reenacted without change, Laws, 2002, ch. 452, § 15; reenacted without change, Laws, 2006, ch. 386, § 15; reenacted without change, Laws, 2008, ch. 406, § 15; reenacted without change, Laws, 2011, ch. 456, § 15; reenacted without change, Laws, 2012, ch. 542, § 15; reenacted without change, Laws, 2013, ch. 332, § 15; reenacted without change, Laws, 2016, ch. 437, § 15, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 15, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 12, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 12. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-37. Payment of witnesses [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4335; 1906, § 4889; Hemingway's 1917, § 7676; 1930, § 7036; 1942, § 7813; Laws, 1908, ch. 85; reenacted without change, Laws, 1982, ch. 389, § 19; reenacted, Laws, 1990, ch. 530, § 17; reenacted and amended, Laws, 1993, ch. 616, § 15; reenacted without change, Laws, 1996, ch. 526, § 16; reenacted without change, Laws, 1998, ch. 303, § 16; reenacted without change, Laws, 2002, ch. 452, § 16; reenacted without change, Laws, 2006, ch. 386, § 16; reenacted without change, Laws, 2008, ch. 406, § 16; reenacted without change, Laws, 2011, ch. 456, § 16; reenacted without change, Laws, 2012, ch. 542, § 16; reenacted without change, Laws, 2013, ch. 332, § 16; reenacted without change, Laws, 2016, ch. 437, § 16, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 16, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 13, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 13. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-39. Transcripts of oral testimony [Repealed effective December 31, 2024].

HISTORY: Codes, 1930, § 7037; 1942, § 7814; Laws, 1926, ch. 128; reenacted

without change, Laws, 1982, ch. 389, § 20; reenacted and amended, Laws, 1990, ch. 530, § 18; reenacted without change, Laws, 1993, ch. 616, § 16; reenacted without change, Laws, 1996, ch. 526, § 17; reenacted without change, Laws, 1998, ch. 303, § 17; reenacted without change, Laws, 2002, ch. 452, § 17; reenacted without change, Laws, 2006, ch. 386, § 17; reenacted without change, Laws, 2008, ch. 406, § 17; reenacted without change, Laws, 2011, ch. 456, § 17; reenacted without change, Laws, 2012, ch. 542, § 17; reenacted without change, Laws, 2013, ch. 332, § 17; reenacted without change, Laws, 2016, ch. 437, § 17, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 1, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 14, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 14. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-41. Findings and determinations shall be in writing; proof and effect thereof [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4284; 1906, § 4836; Hemingway's 1917, § 7621; 1930, § 7038; 1942, § 7815; reenacted without change, Laws, 1982, ch. 389, § 21; reenacted, Laws, 1990, ch. 530, § 19; reenacted without change, Laws, 1993, ch. 616, § 17; reenacted without change, Laws, 1996, ch. 526, § 18; reenacted without change, Laws, 1998, ch. 303, § 18; reenacted without change, Laws, 2002, ch. 452, § 18; reenacted without change, Laws, 2006, ch. 386, § 18; reenacted without change, Laws, 2008, ch. 406, § 18; reenacted without change, Laws, 2011, ch. 456, § 18; reenacted without change, Laws, 2012, ch. 542, § 18; reenacted without change, Laws, 2013, ch. 332, § 18; reenacted without change, Laws, 2016, ch. 437, § 18, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 18, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 15, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 15. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-43. Enforcement of laws and orders, decisions and determinations of commission [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4286; 1906, § 4838; Hemingway's 1917, § 7623; 1930, § 7040; 1942, §§ 7701, 7817; Laws, 1938, ch. 139; reenacted without change, Laws, 1982, ch. 389, § 22; reenacted and amended, Laws, 1990, ch. 530, § 20; reenacted without change, Laws, 1993, ch. 616, § 18; reenacted without change, Laws, 1996, ch. 526, § 19; reenacted without change, 1998, ch. 303, § 19; reenacted without change, Laws, 2002, ch. 452, § 19; reenacted without change, Laws, 2006, ch. 386, § 19; reenacted without change, Laws, 2008, ch. 406, § 19; reenacted without change, Laws, 2011, ch. 456, § 19; reenacted without change, Laws, 2012, ch. 542, § 19; reenacted without change, Laws,

2013, ch. 332, § 19; reenacted without change, Laws, 2016, ch. 437, § 19, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 402, § 19, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 16, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 16. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-47. Appeal bonds; supersedeas bonds [Repealed effective December 31, 2024].

HISTORY: Codes, 1942, §§ 7684, 7700; Laws, 1938, chs. 139, 142; reenacted without change, Laws, 1982, ch. 389, § 24; reenacted, Laws, 1990, ch. 530, § 22; reenacted without change, Laws, 1993, ch. 616, § 19; reenacted without change, Laws, 1996, ch. 526, § 20; reenacted without change, Laws, 1998, ch. 303, § 20; reenacted without change, Laws, 2002, ch. 452, § 20; reenacted without change, Laws, 2006, ch. 386, § 20; reenacted without change, Laws, 2008, ch. 406, § 20; reenacted without change, Laws, 2011, ch. 456, § 20; reenacted without change, Laws, 2012, ch. 542, § 20; reenacted without change, Laws, 2013, ch. 332, § 20; reenacted without change, Laws, 2016, ch. 437, § 20, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 20, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 17, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 17. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-49. Annual reports of the commission [Repealed effective December 31, 2024].

HISTORY: Codes, 1892, § 4333; 1906, § 4887; Hemingway's 1917, § 7674; 1930, § 7041; 1942, § 7818; Laws, 1908, ch. 84; Laws, 1970, ch. 523, § 1; reenacted without change, Laws, 1982, ch. 389, § 25; reenacted, Laws, 1990, ch. 530, § 23; reenacted and amended, Laws, 1993, ch. 616, § 20; reenacted without change, Laws, 1996, ch. 526, § 21; reenacted without change, Laws, 1998, ch. 303, § 21; reenacted without change, Laws, 2002, ch. 452, § 21; reenacted without change, Laws, 2006, ch. 386, § 21; reenacted without change, Laws, 2008, ch. 406, § 21; reenacted without change, Laws, 2011, ch. 456, § 21; reenacted without change, Laws, 2012, ch. 542, § 21; reenacted without change, Laws, 2013, ch. 332, § 21; reenacted without change, Laws, 2016, ch. 437, § 21, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 21, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 387, § 18, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 387, § 18. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 77-1-51. Repeal of §§ 77-1-1 through 77-1-49.

Sections 77-1-1 through 77-1-49, Mississippi Code of 1972, which create the Public Service Commission and prescribe its powers and duties, shall stand repealed as of December 31, 2024.

HISTORY: Laws, 1979, ch. 301, § 53; Laws, 1982, ch. 389, § 26; Laws, 1990, ch. 530, § 24; Laws, 1993, ch. 616, § 21; Laws, 2002, ch. 452, § 22; Laws, 2006, ch. 386, § 22; Laws, 2008, ch. 406, § 22; Laws, 2011, ch. 456, § 22; Laws, 2012, ch. 542, § 22; Laws, 2013, ch. 332, § 22; Laws, 2016, ch. 437, § 22, eff from and after July 1, 2016; Laws, 2018, ch. 402, § 22, eff from and after July 1, 2018; Laws, 2020, ch. 387, § 19, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment extended the date of the repealer for §§ 77-1-1 through 77-1-49 by substituting "December 31, 2024" for "December 31, 2020."

§ 77-1-55. Commission authorized to hire attorneys or consultants to monitor, investigate and seek relief from existing or proposed interstate rates, charges, etc. [Repealed effective July 1, 2024].

(1) The Public Service Commission, with the aid and the assistance of the Public Utilities Staff, shall have the power to monitor, investigate, and seek relief in any appropriate federal forum from all existing or proposed interstate rates, charges, allocations and classifications, and all rules and practices in relation thereto promulgated and prescribed by or for any public utility as defined in Section 77-3-3(d)(i).

(2) The Public Service Commission, with the aid and the assistance of the Public Utilities Staff, may seek relief from any proposed or final decision, order, regulation, rule or law that has an impact on any existing or proposed interstate rate, charge, allocation or classification.

(3) For the purpose of this section, the Public Service Commission and the Executive Director of the Public Utilities Staff may each enter into professional services contracts with one or more attorneys or consultants from a competent, qualified and independent firm as may be required by the commission or the executive director. Costs associated with the professional service contracts shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) for each agency with respect to each rate regulated affected utility in any twelve-month period. The consultants or counsel shall submit periodically, but no less frequently than once each calendar quarter, to the executive director or the commission, as applicable, for approval of payment, itemized bills detailing the work performed. The executive director or the chairman of the commission, as applicable, shall requisition the applicable public utility to make the requisite payments to such consultants. The commission shall allow the utility to recover both the total costs the utility incurred under this section and the carrying charges for those costs through a rate rider established to recover the costs incurred and carrying charges incurred. Such rider shall include a true-up provision to ensure actual recovery of costs paid or otherwise incurred by the utility.

(4) This section shall stand repealed from and after July 1, 2024.

HISTORY: Laws, 2012, ch. 527, § 1; Laws, 2013, ch. 332, § 23; Laws, 2016, ch. 437, § 23, eff from and after July 1, 2016; Laws, 2018, ch. 402, § 23, eff from and after July 1, 2018; Laws, 2020, ch. 387, § 20, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment extended the date of the repealer for this section by substituting "July 1, 2024" for "July 1, 2020" in (4).

CHAPTER 2.

PUBLIC UTILITIES STAFF

§ 77-2-7. Executive director of public utilities staff; appointment; qualifications; salary.

Editor's Notes — Executive Order No. 1475, I., issued by Governor Tate Reeves on April 20, 2020, provides as follows:

"I. In order to cope with and respond to the COVID-19 emergency, pursuant to Miss. Code Ann. § 33-15-11(c)(1), the provision of Miss. Code Ann. § 77-2-7(1) requiring the Mississippi Public Service Commission to submit to the Governor the name of not less than three (3) and not more than six (6) qualified candidates for the position of executive director of the public utility staff is hereby suspended, and such submissions shall be provided by the Mississippi Public Service Commission to the Governor on or before June 1, 2020."

§ 77-2-19. Establishment of Public Utilities Staff Regulation Fund; administration generally; annual audits; disbursements from fund.

Cross References — Application fees collected under grant programs and deposited to the Public Utilities Staff Regulation Fund before September 1, 2020, to be transferred to the Public Utilities Application Fund, see § 77-5-907.

CHAPTER 3.

REGULATION OF PUBLIC UTILITIES

Article 1.	Certificates of Public Convenience and Necessity; Rates; Service.	77-3-1
Article 15.	Mississippi Telephone Solicitation Act.	77-3-701
Article 17.	Caller ID Anti-spoofing Act.	77-3-801

ARTICLE 1.

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; RATES; SERVICE.

Sec.

77-3-42. Rate increase resulting from fuel adjustment clauses or riders; audits of fuel purchases.

Sec.
77-3-93. Cost of purchasing electricity from non-utility generator for period in excess of 30 days included as expense item for purpose of calculating rates.

§ 77-3-1. Application of article to municipal public utilities.

OPINIONS OF THE ATTORNEY GENERAL

Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 does not exempt that portion of the City of Pontotoc gas utility system that extends more than one mile from the City of Pontotoc corporate limits from full regulation by the Mississippi Public Service Commission (MPSC), including the regulation of rates by the MPSC. McKinley, August 27, 1999, A.G. Op. #99-0437.

As Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 neither expressly nor impliedly provides the City of Pontotoc an exclusive right to provide gas service to all of Pontotoc County, the Mississippi Public Service Commission, in its discretion, may award a Certificate of Public Convenience and Necessity for gas service to some utility other than the City of Pontotoc for areas in Pontotoc County that lie outside of the one-mile corridor and are not being served by the City of Pontotoc. McKinley, August 27, 1999, A.G. Op. #99-0437.

A county may not provide potable water to an entity within a certificated area without the permission of the holder of the certificate of public necessity even though no compensation is received by the county for the water. Nowak, Apr. 16, 2004, A.G. Op. 03-0569.

Under the provisions of this section, a public utility owned by the city of Holly Springs that is providing electricity to the town of Ashland is exempt from the requirement in § 77-3-17 that it pay the town two per cent of it's gross revenue from sales to residential and commercial customers within the municipality. Stone, Nov. 19, 2004, A.G. Op. 04-0529.

§ 77-3-3. Definitions.

JUDICIAL DECISIONS

3. "Rate."

In the case of a billing error by an electric company, the circuit court did not err in denying the customer's motion to stay the proceedings and by holding that the Mississippi Public Service Commission lacked jurisdiction because the circuit court correctly classified the dispute as one involving rates as the electric company's failure to apply the correct multiplier to the customer's account pertained to the formula or method by which its charges could be determined; and because the electric company sought compensation for a charge related to a service, product, or commodity it supplied the customer. Door Shop, Inc. v. Alcorn Cty. Elec. Power Ass'n, 261 So. 3d 1099, 2018 Miss. LEXIS 443 (Miss. 2018), modified, — So. 3d —, 2019 Miss. LEXIS 60 (Miss. 2019).

§ 77-3-5. Jurisdiction and powers of commission.

JUDICIAL DECISIONS

2. Jurisdiction.

In the case of a billing error by an electric company, the circuit court did not err in denying the customer's motion to stay the proceedings and by holding that the Mississippi Public Service Commission lacked jurisdiction because the circuit court correctly classified the dispute as

one involving rates as the electric company's failure to apply the correct multiplier to the customer's account pertained to the formula or method by which its charges could be determined; and because the electric company sought compensation for a charge related to a service, product, or commodity it supplied the customer. Door Shop, Inc. v. Alcorn Cty. Elec. Power Ass'n, 261 So. 3d 1099, 2018 Miss. LEXIS 443 (Miss. 2018), modified, — So. 3d —, 2019 Miss. LEXIS 60 (Miss. 2019).

OPINIONS OF THE ATTORNEY GENERAL

Since interstate pipeline companies do not come within the jurisdiction or supervision of the Public Service Commission, these companies or their representatives may legally make campaign contributions to Public Service Commissioners or candidates for Public Service Commissioner. See Section 77-1-11. Hebert, December 6, 1995, A.G. Op. #95-0768.

Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 does not exempt that portion of the City of Pontotoc gas utility system that extends more than one mile from the City of Pontotoc corporate limits from full regulation by the Mississippi Public Service Commission (MPSC), including the regulation of rates by the MPSC. McKinley, August 27, 1999, A.G. Op. #99-0437.

§ 77-3-11. Certificate of public convenience and necessity required; exceptions; complaints prompting hearing as to adequacy of service.

OPINIONS OF THE ATTORNEY GENERAL

If municipally owned plant, project or development, route, line or system or extension thereof is contemplated in area which has been certificated to another utility, certificate authorizing same must first be obtained from Mississippi Public Service Commission. Leslie, July 15, 1992, A.G. Op. #92-0512.

Since a certificate of public convenience and necessity granted by the Public Service Commission authorizes the intrastate sale of water to the public, the City of Southaven may provide water to a municipal fire station in the Pleasant Hill Water Association certificated area. Wise, September 25, 1998, A.G. Op. #98-0539.

§ 77-3-13. Issuance of certificates; temporary certificates; cancelability review upon change of ownership.

OPINIONS OF THE ATTORNEY GENERAL

If municipally owned plant, project or development, route, line or system or extension thereof is contemplated in area which has been certificated to another utility, certificate authorizing same must first be obtained from Mississippi Public Service Commission. Leslie, July 15, 1992, A.G. Op. #92-0512.

§ 77-3-17. Operation of public utility following expiration of municipal franchise; municipal acquisition of utility.

OPINIONS OF THE ATTORNEY GENERAL

Section 77-3-17 makes it clear that power cooperatives must pay two percent of all residential and commercial gross revenues to the municipality in which

they are located. Thus, it makes no difference how many various categories, meter rates or charges the cooperative utilizes in determining what fee must be paid to the municipality. Ringer, August 30, 1996, A.G. Op. #96-0557.

An electric power association was to be responsible to a city for 2 percent of its gross revenue from sales to both residential and commercial customers in the part of the city which it served. Brand, May 1, 2000, A.G. Op. #2000-0202.

Pursuant to § 77-3-17 power cooperatives must pay a franchise fee of two percent of all residential and commercial gross revenues to the municipality in which they are located; it makes no difference how many categories, meter rates or charges the cooperative utilizes in determining what fee must be paid. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

There is no difference in revenue derived from commercial customers and industrial customers in calculating gross revenues for the purposes of payment of the franchise fee by a power cooperative. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

All electricity sold in a municipality by a power cooperative be included in the calculation of gross revenues. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

If a power cooperative has excluded revenues from sales to industrial customers in calculating the amount of the franchise fee, then it may owe the city the fees from these sales to industrial customers. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

A city is mandated to collect franchise fees from utility companies, telephone companies and rural electric cooperatives pursuant to § 77-3-17 and may enforce payment of franchise fees in a court of competent jurisdiction. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

Payment of franchise fees by public utilities that operate in municipalities is required by § 77-3-17 which does not state that the utilities must have a written franchise agreement with the municipalities as a condition for payment of the fees. Mitchell, Sept. 20, 2002, A.G. Op. #02-0510.

Under the provisions of § 77-3-1, a public utility owned by the city of Holly Springs that is providing electricity to the town of Ashland is exempt from the requirement in this section that it pay the town two percent of it's gross revenue from sales to residential and commercial customers within the municipality. Stone, Nov. 19, 2004, A.G. Op. 04-0529.

A municipality has the authority to acquire by eminent domain the facilities of any utility within the corporate limits of such municipality, but may not acquire by eminent domain those facilities of a utility located outside the municipal limits. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

A water and/or sewer utility certificated by the Public Service Commission which has not operated under a previously expired franchise granted by a municipality is not subject to the 2% fee imposed by Section 77-3-17 upon the annexation of all or a portion of its certificated area into a municipality's corporate limits. McCluer, Nov. 10, 2006, A.G. Op. 06-0526.

§ 77-3-23. Procedure for sale, assignment, lease or transfer of certificate.

OPINIONS OF THE ATTORNEY GENERAL

There does not appear to be any prohibition of negotiated arrangement made with water system to provide free sewer hookups to all members of water association as of date of transfer. Woods Oct. 21, 1993, A.G. Op. #93-0663.

§ 77-3-35. Regulation of rates and charges generally; approval of certain contracts of utilities; regulation of provision of telecommunication services; adoption of alternative methods of regulation; Public Service Commission authorized to regulate only rates, terms and conditions of certain switched access services and single-line flat rate voice communication services; incumbent local exchange carrier to provide primary single-line flat rate voice communication service to premises of permanent residence or business within its franchised service territory if cost to requesting party does not exceed certain amount; commission to retain exclusive original jurisdiction over customer complaints for services continuing to be regulated; certain telecommunication utilities required only to file financial or service quality information required to be filed with Federal Communications Commission.

OPINIONS OF THE ATTORNEY GENERAL

Requiring "enhancements" to electric service provided by public utilities, such as steel versus wood poles and underground versus above-ground lines, constitutes a form of ratemaking which is regulated by the Mississippi Public Service Commission. Although a municipality may require lines to be located underground or to be constructed with certain materials, same is subject to the rate schedules approved by MPSC. Sorrell, Mar. 9, 2004, A.G. Op. 04-0099 modified. Waites, Nov. 9, 2004, A.G. Op. 04-0446.

§ 77-3-42. Rate increase resulting from fuel adjustment clauses or riders; audits of fuel purchases.

(1)(a) No public utility, the rates of which are subject to regulation under the provisions of this chapter, shall increase its rate or rate schedule in addition to its base rate as a result of what is commonly referred to as "fuel adjustment clauses" increase or "fuel adjustment riders" if the application of such clause or rider shall result in ultimate cost recovery exceeding the actual cost of fuel burned or consumed in its generating facilities and the cost of purchased energy.

(b) For the purpose of such fuel adjustment clause or rider, the cost of fuel as used herein shall include only the actual cost of the fuel and its transportation and may include such other cost items which are as of the effective date of this section allowed by the federal energy regulatory commission for inclusion in wholesale fuel adjustment clauses under its jurisdiction. In addition thereto fuel cost may include direct costs associated with burning the fuel at the generating plant, such as fuel-handling expenses and the cost of fuel sampling and analysis.

(2)(a) The commission is hereby directed to cause a continuous monitoring by the public utilities staff and a complete audit, as necessary but not less than annually, of all fuel purchases for which fuel adjustment clauses or riders have been placed in effect prior to and after the effective date of this section, which shall totally verify fuel costs as might be consumed in generating plants and all purchased energy of such electric utilities in Mississippi with said audit being based upon generally accepted auditing standards which would accurately provide detailed information as to the actual monthly utility fuel costs. Such audit shall be completely independent of any audit performed on behalf of such utility.

(b) The commission is hereby directed to promulgate rules and regulations, not inconsistent with the laws, (i) to define allowable costs for inclusion in fuel adjustments, (ii) to establish guidelines for defining what elements constitute a just and reasonable fuel adjustment clause or rider, (iii) to establish guidelines for defining what elements constitute efficient and economical procurement and use of energy and fuel, and (iv) to establish general guidelines for making the required review of fuel adjustment clauses or riders as required by this section. Such rules and regulations shall be spread upon the minutes of the commission.

(c) Such audits shall include (i) a determination if fuel and associated costs are properly identified and recorded in the appropriate uniform system of accounts, (ii) a determination if purchased energy and associated costs are properly identified, (iii) an assessment of a utility's practices for economical purchase and use of fuel and electric energy, and (iv) an assessment of the relevant contract terms and conditions and any variations from contract terms.

(3) The audits required by this section shall extend to the fuel acquisition activities of any corporation which is owned in whole or in part by any such public utility under the jurisdiction of the commission or owned in whole or in part by a public utility holding company which is the parent company of any public utility under the jurisdiction of the commission. Public utilities under the jurisdiction of this commission, the rates of which are subject to regulation under the provisions of this chapter, shall not purchase fuel and/or energy from a company or corporation which is owned in whole or in part by that public utility or by the parent company of that public utility unless the selling company or corporation assents to audits as provided for under this section.

(4) Upon receipt of each audit report, the certified public accountant of the public utilities staff shall review the report and furnish the commissioners with a written summary of, and his comments on, the report. The commission shall meet within one (1) week after receipt of the accountant's summary, and shall spread upon the minutes of the commission that it has reviewed said summary and further shall describe any action which it takes regarding the audit report or the fact that no action was required. Any costs included in a fuel adjustment clause or rider by a public utility under the jurisdiction of the commission found in violation of this section shall, by order of the commission, be refunded to the appropriate person or persons. In lieu of payment, the

utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(5) Periodically, and not less frequently than annually, the commission shall review the audit reports, the reports of the certified public accountant of the public utilities staff, any reports of the public utilities staff relating to its monitoring of fuel purchases, and all other relevant information relating to fuel purchases, fuel adjustment clauses or riders, and purchased energy for the purpose of determining (a) whether or not the utility is properly and correctly employing the use of the fuel adjustment clause or rider applicable to its operations and billing procedures, (b) whether or not the utility has engaged in practices in the acquisition of fuel or purchased energy which are efficient and economical, and (c) whether or not there is reason to question the practices, contracts, operations or procedures of the utility in the purchase or acquisition of fuel or purchased energy relative to efficiency, economy and the public interest.

If the commission, after following the procedures described above, has reasonable cause to believe that inefficient or uneconomical procurement or use of fuel or purchased energy has resulted in unreasonable or unjust charges or costs to the consumers, then the commission shall initiate a procedure for hearing as provided for in Section 77-3-47 for the purpose of determining whether or not any of the costs or charges included in the fuel adjustment charges to the consumers were unreasonable or unjust. If the commission upon hearing shall find that any charges for the purchase or procurement of fuel or purchased energy were unreasonable or unjust, then the commission shall order that such costs or charges be refunded to the appropriate person or persons together with interest at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(6)(a) The commission shall maintain at all times complete and current data relating to sales and purchases of electric capacity of all utilities, including copies of contracts and agreements for the purchase of electric capacity, amendments to such contracts, records of purchases and sales of electric capacity, and all other relevant information and data deemed appropriate by the commission for carrying out the provisions of this section.

(b) The commission is hereby directed to review, not less frequently than annually, the information and data described above. If, from said review the commission has reasonable cause to believe that inefficient or uneconomical sales or purchases of electric capacity by a utility, the rates of which are subject to regulation by the commission, have resulted in unreasonable or unjust charges or costs to the consumers, then the commission shall initiate a procedure for hearing as provided for in Section 77-3-47 for the purpose of determining whether or not any of the costs or charges for sales or purchases of electric capacity included in the charges to consumers were unreasonable or unjust. If the commission, upon hearing, shall find

that any such charges for the sale or purchase of electric capacity were unreasonable or unjust, then the commission shall order that such costs or charges be refunded to the appropriate person or persons, together with interest thereon at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(7) The commission shall provide a full and complete report of said audits to the Legislature on or before March 15 of each year. The report shall include certification by the commission that the information is true and correct as well as other clarifications of the audit information and any recommendations for correcting imperfections in statutes relative to existing fuel or purchased gas adjustments.

(8) Nothing in this section shall prohibit the commission from entering an order in a declared emergency allowing public utilities under such emergency circumstances to adjust their rates for a period not to exceed sixty (60) days upon declaration of said emergency. There shall be a full hearing and a complete and total accounting as to total costs of said commission order to public utilities customers, with detailed accounting of such emergency fuel adjustment clause order being made available to the public.

(9) This section shall not apply to a municipality, including a joint agency organized pursuant to Section 77-5-701 et seq., as amended.

HISTORY: Laws, 1978, ch. 507, § 1(3); Laws, 1983, ch. 467, § 19, eff from and after passage (approved April 6, 1983); Laws, 2020, ch. 387, § 22, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (7), substituted "March 15 of each year" for "January 15 of each year"; and made some minor stylistic and punctuation changes.

§ 77-3-93. Cost of purchasing electricity from non-utility generator for period in excess of 30 days included as expense item for purpose of calculating rates.

(1) Whenever a utility purchases at wholesale from a non-utility generator or some non-associated source all or a portion of its electric capacity and/or energy requirements for a period in excess of thirty (30) days, such utility shall be entitled to include as expense items in its revenue requirements, for the purpose of the calculation of its rates for retail service, the cost of such capacity and energy so purchased, and in addition to such cost, an amount representing a return on the capacity purchased over the period of the test year which is being used to calculate the revenue requirements. This amount shall be calculated using the return allowed by the commission as provided in Section 77-3-95. Notwithstanding the above or any provision of law to the contrary, for any renewable power purchase entered into after July 1, 2020, including, but not limited to, solar, wind, biomass or storage, a utility shall be entitled to incorporate renewable purchased costs in its rate base.

(2) Nothing in Sections 77-3-91 through 77-3-95 shall be interpreted to allow a return on the energy purchased by a utility pursuant to its obligation to purchase energy under the federal Public Utilities Regulatory Policy Act of 1978.

HISTORY: Laws, 1994, ch. 316, § 2, eff from and after passage (approved March 10, 1994); Laws, 2020, ch. 387, § 21, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added the last sentence in (1).

ARTICLE 15.

MISSISSIPPI TELEPHONE SOLICITATION ACT.

Sec.

77-3-705. Definitions.
77-3-721. Fees; funding of expenses of agency; deposit of user charges and fees authorized under this section into State General Fund [Repealed effective July 1, 2021].
77-3-737. Repealed.

§ 77-3-701. Short title

Cross References— A violation of the Caller ID Anti-spoofing Act (§ 77-3-801 et seq.) is a violation of this article, see § 77-3-809.

§ 77-3-705. Definitions.

For the purposes of this article, the following words and terms shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Consumer" means a person or business that receives a telephone call or text message from a telephone solicitor.

(b) "Caller identification service" means a type of telephone service which permits a telephone subscriber to view the telephone number and name of the person or entity making an incoming telephone call or text message.

(c) "Telephone solicitor" means any person, firm, entity, organization, partnership, association, corporation, charitable entity, or a subsidiary or affiliate thereof, who engages in any type of telephone solicitation on his or her own behalf or through representatives, independent contractors, salespersons, agents, automated dialing systems, text messaging systems, or any other machines or other individuals or systems.

(d) "Telephone solicitation" means any voice or text message communication over the telephone line or cellular network of a consumer for the purpose of:

(i) Encouraging the purchase or rental of, or investment in, property;

(ii) Soliciting a sale of any consumer goods or services, or an extension of credit for consumer goods or services;

(iii) Soliciting any other item of value, pecuniary or otherwise, regardless of whether a sales presentation is made; or

(iv) Soliciting a charitable contribution of money or property.

(e) "Commission" means the Mississippi Public Service Commission.

(f) "Doing business in this state" refers to businesses which conduct telephone solicitations from any location to consumers located in this state.

(g) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family or household purposes, including, without limitation, any property intended to be attached to, or installed in, any real property, and any services related to the property.

(h) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer, with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer, which relationship is currently existing or was terminated within six (6) months of the telephone solicitation; however, the act of purchasing consumer goods or services under an extension of credit does not create an existing business relationship between the consumer and the entity extending credit to the consumer for such purchase. The term does not include the situation wherein the consumer has merely been subject to a telephone solicitation by or at the behest of the telephone solicitor within the six (6) months immediately preceding the contemplated telephone solicitation.

(i) "Charitable organization" means any person or entity holding itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental or conservation, civic or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters, or any other persons who protect the public safety, or for any other purpose where a charitable appeal is the basis of the solicitation.

(j) "Sales presentation" means attempting to obtain something of value, pecuniary or otherwise, regardless of whether consideration is or is expected to be exchanged.

HISTORY: Laws, 2003, ch. 478, § 3; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 3; reenacted without change, Laws, 2006, ch. 367, § 3; reenacted without change, Laws, 2010, ch. 324, § 3; reenacted without change, Laws, 2013, ch. 322, § 3; Laws, 2016, ch. 322, § 2; reenacted without change, Laws, 2017, ch. 312, § 3, eff from and after July 1, 2017; Laws, 2019, ch. 471, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote (a), which read: "'Consumer' means an actual or prospective purchaser, lessee or recipient of consumer goods or services"; in (d), inserted "or text message" and "or cellular network" in the introductory paragraph, and added (iii) and (iv) and made related changes; and added (j).

§ 77-3-707. Use of the "no-calls" database by telephone solicitors mandatory.

(1) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-

711, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state unless the telephone solicitor has purchased the "no-calls" database from the commission or the entity under contract with the commission.

(2) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-711, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state who has given notice to the commission, or the entity under contract with the commission, of his or her objection to receiving telephone solicitations.

(3) The commission, or an entity under contract with the commission, shall establish and operate a "no-calls" database composed of a list of telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. The "no-calls" database may be operated by the commission or by another entity under contract with the commission.

(4) Each local exchange company and each competing local exchange carrier shall provide written notification on a semiannual basis to each of its consumers of the opportunity to provide notification to the commission, or the entity under contract with the commission, that the consumer objects to receiving telephone solicitations. The notification must be disseminated at the option of the carrier, by television, radio or newspaper advertisements, written correspondence, bill inserts or messages, a publication in the consumer information pages of the local telephone directory, or any other method not expressly prohibited by the commission.

(5) A telephone solicitor may not violate the Caller ID Anti-Spoofing Act in Section 77-3-801 et seq., and if in violation of such act, he shall also be in violation of this article. In addition to any remedies or penalties otherwise provided by law, such telephone solicitor shall be subject to any remedies or penalties available for a violation of this article.

HISTORY: Laws, 2003, ch. 478, § 4; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 4; reenacted without change, Laws, 2006, ch. 367, § 4; reenacted without change, Laws, 2010, ch. 324, § 4; reenacted without change, Laws, 2013, ch. 322, § 4; reenacted without change, Laws, 2017, ch. 312, § 4, eff from and after July 1, 2017; Laws, 2019, ch. 487, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added (5).

§ 77-3-711. Exempt categories.

The provisions of this article shall not apply to:

(a) A person soliciting:

(i) Who does not make the major sales presentation during the telephone solicitation;

(ii) Without the intent to complete or obtain provisional acceptance of a sale, a charitable contribution, or the payment of some other item of value, pecuniary or otherwise, during the telephone solicitation; or

(iii) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes

the sales presentation at a later face-to-face meeting between the person soliciting and the prospective purchaser or consumer.

(b) A person who is a licensee under Chapter 35, Title 73, Mississippi Code of 1972, who is a resident of the State of Mississippi, and whose telephone solicitation is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in connection with his real estate license and not in conjunction with any other offer.

(c) A motor vehicle dealer as that term is defined in Section 63-17-55, who is a resident of the State of Mississippi and who maintains a current motor vehicle dealer's license issued by the Mississippi Motor Vehicle Commission, whose telephone solicitation is for the sole purpose of selling, offering to sell, soliciting or advertising the sale of motor vehicles in connection with his motor vehicle dealer's license and not in conjunction with any other offer.

(d) An agent as that term is defined in Section 83-17-1 whose telephone solicitation is for the sole purpose of soliciting, consulting, advising, or adjusting in the business of insurance.

(e) A broker-dealer, agent, or investment advisor registered under Chapter 71, Title 75, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of effecting or attempting to effect the purchase or sale of securities or has the purpose of providing or seeking to provide investment or financial advice.

(f) A person calling on behalf of a charitable organization which is registered under Chapter 11, Title 79, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of soliciting for the charitable organization and who receives no compensation for his activities on behalf of the organization.

(g) A person calling on behalf of a newspaper of general circulation, whose telephone solicitation is for the sole purpose of soliciting a subscription to the newspaper from, or soliciting the purchase of advertising by, the consumer.

(h) A person calling on behalf of any supervised financial institution or parent, subsidiary or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, small loan company, consumer finance lender, commercial finance lender or insurer, provided that the institution has a physical office located in the State of Mississippi and is subject to supervision by an official or agency of the State of Mississippi or of the United States.

(i) A person calling on behalf of a funeral establishment licensed under Section 73-11-41, cemetery or monument dealer, if the sole purpose of the telephone solicitation relates to services provided by the funeral or death related establishments in the course of its ordinary business.

(j) Any telephone solicitor who solicits a consumer with whom he has an established business relationship.

HISTORY: Laws, 2003, ch. 478, § 6; reenacted and amended, Laws, 2005, 2nd

Ex Sess, ch. 62, § 6; reenacted without change, Laws, 2006, ch. 367, § 6; reenacted without change, Laws, 2010, ch. 324, § 6; reenacted without change, Laws, 2013, ch. 322, § 6; reenacted without change, Laws, 2017, ch. 312, § 6, eff from and after July 1, 2017; Laws, 2019, ch. 471, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "a charitable contribution, or the payment of some other item of value, pecuniary or otherwise" in (a)(ii).

§ 77-3-721. Fees; funding of expenses of agency; deposit of user charges and fees authorized under this section into State General Fund [Repealed effective July 1, 2021]

All fees collected under the provisions of this article shall be deposited into a special fund which is created in the State Treasury to be expended by the commission for the implementation and administration of this article. From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

This section shall stand repealed July 1, 2021.

HISTORY: Laws, 2003, ch. 478, § 11; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 11; reenacted without change, Laws, 2006, ch. 367, § 11; reenacted without change, Laws, 2010, ch. 324, § 11; reenacted without change, Laws, 2013, ch. 322, § 11; reenacted without change, Laws, 2017, ch. 312, § 11; Laws, 2017, 1st Ex Sess, ch. 7, § 39, eff from and after passage (approved June 23, 2017); Laws, 2020, ch. 455, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment extended the date of the repealer for the section by substituting "July 1, 2021" for "July 1, 2020" in the last paragraph.

§ 77-3-725. Violations; hearings; penalties.

The commission may investigate alleged violations and initiate proceedings relative to a violation of this article or any rules and regulations promulgated pursuant to this article. Such proceedings include, without limitation, proceedings to issue a cease and desist order, and to issue an order imposing a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation. The commission shall afford an opportunity for a fair hearing to the alleged violator(s) after giving written notice of the time and place for said hearing. Failure to appear at any such hearing may result in the commission finding the alleged violator(s) liable by default. Any telephone solicitor found to have violated this article, pursuant to a hearing or by default, may be subject to a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation to be assessed and collected by the commission. Each telephonic communication shall constitute a separate violation.

All penalties collected by the commission shall be deposited in the special fund created under Section 77-3-721 for the administration of this article.

The commission may issue subpoenas, require the production of relevant documents, administer oaths, conduct hearings, and do all things necessary in the course of investigating, determining and adjudicating an alleged violation.

The remedies, duties, prohibitions and penalties set forth under this article shall not be exclusive and shall be in addition to all other causes of action, remedies and penalties provided by law, including, but not limited to, the penalties provided by Section 77-1-53.

HISTORY: Laws, 2003, ch. 478, § 13; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 13; reenacted without change, Laws, 2006, ch. 367, § 13; reenacted without change, Laws, 2010, ch. 324, § 13; reenacted without change, Laws, 2013, ch. 322, § 13; reenacted without change, Laws, 2017, ch. 312, § 13, eff from and after July 1, 2017; Laws, 2019, ch. 471, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "Ten Thousand Dollars ($10,000.00)" for "Five Thousand Dollars ($5,000.00)" twice in the first paragraph.

§ 77-3-737. Repealed.

Repealed by Laws, 2019, ch. 471, § 4, eff from and after July 1, 2019.

§ 77-3-737. [Laws, 2003, ch. 478, § 19; Laws, 2005, 2nd Ex Sess, ch. 62, § 19; reenacted without change, Laws, 2006, ch. 367, § 19; Laws, 2010, ch. 324, § 19; Laws, 2013, ch. 322, § 19; reenacted and amended, Laws, 2017, ch. 312, § 19, eff from and after July 1, 2017.]

Editor's Notes — Former § 77-3-737 repealed §§ 77-3-701 through 77-3-737, effective July 1, 2021.

ARTICLE 17.

CALLER ID ANTI-SPOOFING ACT.

Sec.

77-3-803. Definitions.
77-3-805. Causing caller identification service to transmit misleading or inaccurate caller identification information to subscriber prohibited.
77-3-809. Penalties.

§ 77-3-801. Short title.

Cross References— A violation of the Mississippi Telephone Solicitation Act (§ 77-3-701 et seq.) is a violation of this article, see § 77-3-707.

§ 77-3-803. Definitions.

As used in this article:

(a) "Automatic number identification" means a system that identifies the billing account for a call and includes an enhanced 911 service capability that enables the automatic display of the ten-digit number used to place a

911 call from a wire line, wireless, interconnected VoIP or nontraditional telephone service.

(b) "Caller identification information" means information provided by a caller identification service regarding the telephone number, or other origination information, of a call or facsimile transmission made using a telecommunications service or an interconnected VoIP service, or of a text message sent using a text-messaging service.

(c) "Caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or interconnected VoIP service. The term includes automatic number identification services.

(d) "Interconnected VoIP service" means an interconnected Voice over Internet Protocol service that:

(i) Enables real-time, two-way voice communications;

(ii) Requires a broadband internet connection from the user's location;

(iii) Requires internet protocol-compatible customer premises equipment; and

(iv) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(e) "Place of primary use" means the street address where a subscriber's use of a telecommunications service or interconnected VoIP service primarily occurs, which shall be:

(i) The residential street address or the primary business street address of the subscriber or, in the case of a subscriber of interconnected VoIP service, the subscriber's registered location; and

(ii) Within the licensed service area of the provider.

(f) "Provider" means a person or entity that offers telecommunications service or interconnected VoIP service.

(g) "Registered location" means the most recent information obtained by an interconnected VoIP service provider that identifies the physical location of an end user.

(h) "Subscriber" means a person:

(i) Who subscribes to a caller identification service in connection with a telecommunications service or an interconnected VoIP service; and

(ii) Whose place of primary use for the service described in paragraph (h)(i) is located in Mississippi.

(i) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to classes of users so as to be effectively available directly to the public, regardless of the facilities used.

HISTORY: Laws, 2010, ch. 326, § 2, eff from and after July 1, 2010; Laws, 2019, ch. 487, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section to delete definitions for "call," "caller," "enter," "false information," and "telephone caller identification

system" and add definitions for "automatic number identification," "caller identification information," "caller identification service," "interconnected VoIP service," "place of primary use," "provider," "registered location," "subscriber," and "telecommunications service."

§ 77-3-805. Causing caller identification service to transmit misleading or inaccurate caller identification information to subscriber prohibited.

Except as provided in Section 77-3-807, a person shall not, in connection with any telecommunications service or interconnected VOIP service, knowingly and with the intent to defraud or cause harm to another person or to wrongfully obtain anything of value, cause any caller identification service to transmit misleading or inaccurate caller identification information to a subscriber.

HISTORY: Laws, 2010, ch. 326, § 3, eff from and after July 1, 2010; Laws, 2019, ch. 487, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote the section, which read: "(1) A person may not enter or cause to be entered false information into a telephone caller identification system with the intent to deceive, defraud or mislead the recipient of a call. (2) A person may not place a call knowing that false information was entered into the telephone caller identification system with the intent to deceive, defraud or mislead the recipient of the call."

§ 77-3-809. Penalties.

(1) Any person who violates this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) or shall be imprisoned in the county jail not exceeding one (1) year, or both.

(2) Any violation of this article constitutes an unlawful trade practice under Section 75-24-5 and, in addition to any remedies or penalties set forth in this article, shall be subject to any remedies or penalties available for a violation of that statute.

(3) Any violation of this article constitutes a violation of the Mississippi Telephone Solicitation Act, Section 77-3-701 et seq., and in addition to any remedies or penalties provided in this article, shall be subject to any remedies or penalties available for a violation of that act.

HISTORY: Laws, 2010, ch. 326, § 5, eff from and after July 1, 2010; Laws, 2019, ch. 487, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added (3).

CHAPTER 5.

ELECTRIC POWER

Article 5. Electric Power Associations. 77-5-201
Article 19. Mississippi Electric Cooperatives Broadband COVID-19 Act. 77-5-901

ARTICLE 5.

ELECTRIC POWER ASSOCIATIONS.

Sec.
77-5-205. Formation of non-profit corporations authorized.
77-5-231. Specific powers of corporation.

§ 77-5-205. Formation of non-profit corporations authorized.

Three (3) or more natural persons may, by executing, filing and recording a certificate as hereafter provided in this article, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy by making electric energy available at the lowest cost consistent with sound economy and prudent management of the business of such corporations. In addition, such corporations may serve the purposes provided under the Mississippi Broadband Enabling Act.

HISTORY: Codes, 1942, § 5464; Laws, 1936, ch. 184; Laws, 2019, ch. 301, § 9, eff from and after passage (approved January 30, 2019).

Amendment Notes — The 2019 amendment, effective January 30, 2019, added the last sentence.

Cross References — Mississippi Broadband Enabling Act, see § 77-17-1 et seq.

§ 77-5-223. Powers of board of directors.

JUDICIAL DECISIONS

2. Power to amend bylaws.

Chancery court properly granted an electric power association's motion to compel arbitration in the members' action for failure to return excess revenues and receipts because the parties entered into a valid arbitration agreement, the association's board of directors was statutorily authorized to adopt and amend the bylaws, the members agreed to be bound by the bylaws and knew that they could be amended, their dispute fell within the scope of the agreement, and no external factors precluded arbitration, and there was no evidence that the arbitration provision was a contract of adhesion or was procedurally unconscionable. Virgil v. Sw. Miss. Elec. Power Ass'n, 296 So. 3d 53, 2020 Miss. LEXIS 87 (Miss. 2020).

§ 77-5-231. Specific powers of corporation.

(1) A corporation shall have power to do any and all acts or things

necessary or convenient for carrying out the purposes for which it was formed, including, but not limited to:

(a) To sue and be sued.

(b) To have a seal and alter the same at pleasure.

(c) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(d) To render service and to acquire, own, operate, maintain and improve a system or systems within the state and in counties adjacent thereto.

(e) To pledge all or any part of its revenues and to mortgage or otherwise incumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its bonds or other obligations.

(f) To use any right-of-way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of a system, granted by the state or any political subdivision thereof, provided that the governing body of such political subdivision shall consent to such use, and to have and exercise the power of eminent domain in the manner provided by the condemnation laws of this state for acquiring private property for public use, such right to be paramount except as to the property of the state or of any political subdivision thereof.

(g) To accept gifts or grants of money, property, real or personal, from any person, municipality or federal agency and to accept voluntary and uncompensated services.

(h) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any person, federal agency, state agency or municipality for the purchase, transfer or sale of energy and/or the acquisition of all or any part of any system, and in connection with any such contract to stipulate and agree to such covenants, terms and conditions as the board may deem appropriate, including covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices and the manner of disposing of the revenues of the system operated and maintained by the corporation.

(i) To sell, lease, or otherwise dispose of all or any part of its property, subject however to the provisions of Section 77-5-237.

(j) To contract debts, borrow money and to issue, assume or indorse the payment of bonds or other evidences of indebtedness.

(k) To fix, maintain and collect fees, rents, tolls and other charges for services rendered.

(*l*) To acquire and to sell, lease, distribute and generally to deal in electrical and plumbing appliances, apparatus, machinery and equipment

for the purpose of and in connection with the promotion of the sale of electric energy to its customers; to assist its customers to purchase or otherwise obtain such appliances, apparatus, machinery and equipment; to assist its customers to wire their premises and to install therein such appliances, apparatus, machinery and equipment; to acquire and to indorse, sell, pledge, hypothecate and dispose of notes, bonds and other obligations of its customers in carrying out the purposes expressed in this paragraph.

(m) To maintain, in any reasonable manner and in its discretion, its easements and rights-of-way and adjacent property within a reasonable or necessary distance of its energy facilities free of vegetation, trees, limbs or other impediments in order to foster the integrity and reliability of the corporation's electric energy system or the safety of the public or its members, agents or employees.

(n) To condemn any land, easements, or rights-of-way, either on, under, or above the ground, as the association may deem necessary for any purposes mentioned in this article other than the purposes described in subsection (2) of this section, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes. Such power of condemnation may be exercised in the mode or method of procedure prescribed by Chapter 27, Title 11, Mississippi Code of 1972, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain. Where condemnation proceedings become necessary, the judge of the circuit court or the judge of the county court in counties where the county court exists, in which such proceedings are filed, shall, upon application of the authority, and upon the deposit in court, to the use of the person or persons lawfully entitled thereto, of such amount as the judge may deem necessary to assure just compensation, order that the right of possession shall issue immediately or as soon and upon such terms as the judge, in his discretion, may deem just and proper. Upon application of the parties in interest other than the corporation, the judge may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceedings.

(o) To operate across state lines.

(p) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

(q) To perform as provided under the Mississippi Broadband Enabling Act.

(2) Any generation and transmission electric corporation created under this article may undertake economic development activities, whether directly, indirectly, or in conjunction with other entities, including activities such as providing capital, or investment in or acquisition and development of business

or industrial sites and the necessary infrastructure or services needed to attract new or existing businesses or industry, to create or maintain employment opportunities, or otherwise to positively impact its service territory or in some manner promote the sale of electric energy.

HISTORY: Codes, 1942, § 5474; Laws, 1936, ch. 184; Laws, 1938, chs. 251, 252; Laws, 2013, ch. 466, § 2; Laws, 2015, ch. 360, § 1; Laws, 2016, ch. 387, § 12, eff from and after July 1, 2016; Laws, 2019, ch. 301, § 10, eff from and after passage (approved January 30, 2019).

Amendment Notes — The 2019 amendment, effective January 30, 2019, added (1)(q).

Cross References — Mississippi Broadband Enabling Act, see § 77-17-1 et seq.

ARTICLE 15.

JOINT MUNICIPAL ELECTRIC POWER.

§ 77-5-725. Rights and powers of joint agencies.

OPINIONS OF THE ATTORNEY GENERAL

The Municipal Energy Agency of Mississippi is not vested with specific authority to reimburse employees for educational costs and fees, but since it is vested with the power to employ such employees as may be required and to fix their compensation, it may include provisions for the reimbursement of education costs and fees as part of an employee's future compensation. Davis, March 27, 1998, A.G. Op. #98-0050.

ARTICLE 19.

MISSISSIPPI ELECTRIC COOPERATIVES BROADBAND COVID-19 ACT.

Sec.

77-5-901. Short Title.
77-5-903. Legislative findings and declarations; Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund created; Covid-19 Broadband Provider Grant Program Fund created; definitions; transfer of unobligated monies to Unemployment Compensation Fund.
77-5-905. Purpose of projects applied for by electric cooperatives or broadband providers; identification of unserved or underserved census blocks; electric cooperative's projects to be considered pilot or special purpose projects; applicants receiving grant monies to provide matching dollar for dollar nongrant monies toward projects.
77-5-907. Public Utilities Application Fund created; source of funds; unexpended monies; use of monies.
77-5-909. Application for grant programs; application fee; review of primary application; distribution of approved grants; criteria for determination of multiple projects including common census blocks; amended applications; ranking of primary applications for overdrawn grant funds; secondary and tertiary applications.

Sec.
77-5-911. Monthly project status reports; requisite information; filing notice of project completion; field or onsite audits, engineering reviews, or requests for additional information to ensure compliance with article; financial information confidential and proprietary; written notice of compliance with article; noncompliant applicants.

§ 77-5-901. Short Title.

This article shall be known and may be cited as the "Mississippi Electric Cooperatives Broadband COVID-19 Act."

HISTORY: Laws, 2020, ch. 487, § 2, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Editor's Note — Laws of 2020, ch. 487, § 1, effective July 9, 2020, and Laws of 2020, ch. 495, § 1, effective September 1, 2020, provide:

"SECTION 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund out of the Budget Contingency Fund.....$ 65,000,000.00.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Covid-19 Broadband Provider Grant Program Fund out of the Budget Contingency Fund..... $ 10,000,000.00."

Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective September 1, 2020, made no changes to the section as it was added by Section 2 of Chapter 487, Laws of 2020.

§ 77-5-903. Legislative findings and declarations; Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund created; Covid-19 Broadband Provider Grant Program Fund created; definitions; transfer of unobligated monies to Unemployment Compensation Fund.

(1) The Legislature finds and declares that the State of Emergency and ongoing public health crisis related to COVID-19 has caused significant challenges in the immediate delivery of educational, health care and other services. The Legislature further finds and declares that due to the COVID-19 pandemic there is an immediate increased need for reliable internet service in rural Mississippi, including expanded rural broadband capacity to facilitate and assist with distance learning, telemedicine, and telework, which is required for citizens to continue their education, receive necessary services, and work in a healthy and safe environment.

(2) Therefore, as part of this state's response to the COVID-19 public health emergency, the Legislature determines that it is necessary to create and there is hereby created in the State Treasury a special fund to be designated as the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. The Department of Finance and Administration, in conjunction with the Mississippi Public Utilities Staff, shall establish the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program" ("Cooperative Program") to provide grants to electric cooperatives for the purpose of expanding immediately broadband access in unserved and underserved areas of the State of Mississippi, as determined by the Mississippi Public Utilities Staff which the Legislature hereby finds and determines are necessary expenditures due to the public health emergency with respect to COVID-19.

(3) The Legislature further determines, as part of this state's response to the COVID-19 public health emergency, that it is necessary to create and there is hereby created in the State Treasury a special fund to be designated as the "COVID-19 Broadband Provider Grant Program Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund; and the Department of Finance and Administration, in conjunction with the Mississippi Public Utilities Staff, shall establish the "COVID-19 Broadband Grant Program" ("General Program") to provide grants to broadband providers, as defined in subsection (4) of this section, for the purpose of expanding broadband access in unserved and underserved areas of the State of Mississippi, as determined by the Mississippi Public Utilities Staff, which the Legislature hereby finds and determines are necessary expenditures due to the public health emergency with respect to COVID-19.

(4) As used in this article, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Applicant" means an electric cooperative or broadband provider that makes an application for a grant under this article.

(b) "Broadband affiliate" means any entity that is (i) wholly or partially owned by an electric cooperative, and (ii) formed to own or operate a broadband system or provide broadband services.

(c) "Broadband provider" means an entity that (i) is not an electric cooperative or an affiliate of an electric cooperative and (ii) is authorized to provide broadband services in Mississippi.

(d) "Broadband services" means any service that consists of or includes the provision of or connectivity to a high-speed, high-capacity transmission medium that can carry signals from or to multiple sources at a rate not less than one hundred (100) megabits per second in the downstream direction and not less than one hundred (100) megabits per second in the upstream direction, and that either: (i) is used to provide access to the internet, or (ii) provides computer processing, information storage, information content or

protocol conversion, including any service applications or information service provided over such high-speed access service.

(e) "Census block" means a geographic area defined as a census block by the United States Department of Commerce, Bureau of the Census, in conducting the 2010 decennial census.

(f) "COVID-19" means the Coronavirus Disease 2019;

(g) "Department" means the Department of Finance and Administration; and

(h) "Electric cooperative" means a corporation formed or operating under Section 77-5-201 et seq.

(i) "Grant Funds" means the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund" and the "COVID-19 Broadband Provider Grant Program Fund."

(j) "Grant Programs" means the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program" and the "COVID-19 Broadband Provider Grant Program."

(k) "Primary application" means the initial application filed by an applicant under this article for the purpose of obtaining a grant from one (1) of the grant funds.

(*l*) "Public Utilities Staff" or "staff" means the Mississippi Public Utilities Staff.

(m) "Public Utilities Staff Regulation Fund" means the fund established under Section 77-2-19.

(n) "Secondary application" means an application filed by an applicant under this article after its primary application has been filed and that is submitted for the purpose of obtaining an additional grant from one (1) of the grant funds. Approved grants for secondary applications will be distributed from each grant fund on a pro rata basis, as determined by the department.

(o) "Tertiary application" means an application filed by an electric cooperative after its secondary application has been filed and that is submitted for the purposes of obtaining an additional grant from the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund.

(5) Unexpended amounts remaining in either of the grant funds at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the grant funds shall be deposited to the credit of the grant funds, respectively. Monies in the grant funds shall be used for the purpose of providing payments to eligible applicants as provided in this article. Monies in the grant funds shall be administered and disbursed by the department and Staff in compliance with this article and in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. If on October 1, 2020, there are unobligated monies in one or both of the grant funds, or if at any other time undistributed monies in

either grant funds are determined by the department to be ineligible to be spent by the department, those monies shall be transferred into the Unemployment Compensation Fund.

HISTORY: Laws, 2020, ch. 487, § 3, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Joint Legislative Committee Note — Section 3 of Chapter 487, Laws of 2020, effective from and after passage (became law without the Governor's signature on July 9, 2020), added this section. Section 1 of Chapter 495, Laws of 2020, effective from and after passage (became law without the Governor's signature on September 1, 2020), amended this section. As set out above, this section reflects the language of Section 1 of Chapter 495, Laws of 2020, which contains language that provides that it supersedes § 77-5-903 as added by Chapter 487.

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective September 1, 2020, in (1), substituted "telework, which" for "telework and which" in the last sentence; and in (4), inserted "(1)" in (k) and (n), added (o), and made minor punctuation changes.

§ 77-5-905. Purpose of projects applied for by electric cooperatives or broadband providers; identification of unserved or underserved census blocks; electric cooperative's projects to be considered pilot or special purpose projects; applicants receiving grant monies to provide matching dollar for dollar nongrant monies toward projects.

(1) From the date of the beginning of the period for applications for grants under this section, the Staff shall consider and review applications from any eligible applicant. Any project applied for by an electric cooperative must be for the purpose of the electric cooperative immediately installing broadband fiber on its electric delivery system and thereby facilitating the provision of broadband services by its broadband affiliate or an unaffiliated broadband provider. Any project applied for by a broadband provider must be for the purpose of the broadband provider's delivery of broadband services. All projects under each of the Grant Programs must be designed to immediately provide increased broadband services to an area or areas that have been determined by the Public Utilities Staff to be unserved or underserved according to the latest publicly available Federal Communications Commission broadband data. Under this article, electric cooperatives may only apply for and receive grants under the Cooperative Program, and broadband providers may only apply for and receive grants under the General Program.

(2) As to each of those specific Mississippi counties for which such information is requested by an electric cooperative or broadband provider, the Public Utilities Staff shall, by no later than July 10, 2020, specifically identify census blocks that are unserved or underserved according to the latest publicly available Federal Communications Commission broadband data. In order to create efficiencies in the administration of the Grant Programs and avoid the imposition of undue and unnecessary burdens on the Staff, a single electric cooperative or broadband provider may not request such information for more than three (3) counties and any requests for such information must be submitted to the Staff by no later than the close of business on July 7, 2020. The Staff shall provide its identification of such census blocks directly to the department and to each electric cooperative and broadband provider requesting the Staff for such information, and also provide such information to the public through a posting on the Public Utilities Staff's website. Each applicant shall rely on the Public Utilities Staff's identification of unserved and underserved census blocks in making its application(s) for grant funds and spending awarded grant funds.

(3) In an attempt to facilitate broader participation in the Cooperative Program, an electric cooperative's project or projects, for which grant monies are provided under this article, shall be considered pilot or special purpose projects and shall not obligate the electric cooperative receiving the grant monies or such electric cooperative's broadband affiliate to provide broadband access to the entire service area of the electric cooperative.

(4) For each dollar of grant monies requested for a project or projects by an applicant, the applicant must commit and spend a dollar of nongrant monies toward such project or projects. Universal Service Fund, Connect America Fund, or other grants awarded for broadband expansion through a separate state or federal program shall not be used for the required matching funds, but this limitation shall not include or extend to any loans of any kind. The primary application made by an applicant shall be for a grant totaling not more than Six Million Dollars ($6,000,000.00).

(5) An applicant submitting a primary application may also submit a secondary application at the same time or soon thereafter with no maximum to the amount of grant monies that may be requested. The department shall first obligate all primary applications made that meet the eligibility criteria and are approved by the Staff. Then, if grant monies are still available the department shall consider and obligate any secondary applications that meet the eligibility criteria and are approved by the Staff. During the secondary application process, if one (1) of the grant funds has unobligated monies remaining after all qualifying secondary applications are considered, then the State Fiscal Officer shall transfer those unobligated monies into the other grant fund for distribution in the secondary application process of such other grant fund.

(6) From and after September 1, 2020, an electric cooperative may submit a tertiary application for the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program with no maximum amount of grant monies that may be requested. During the tertiary application process, if one (1) of the

grant funds has unobligated monies remaining after all qualifying applications have been considered, then the State Fiscal Officer shall transfer those unobligated monies into the other grant fund for distribution in the tertiary application process.

(7) Any grant monies provided under this article shall be spent no later than December 30, 2020, or by such later date as may be specified in the guidelines, guidance, rules, regulations and/or other criteria of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

HISTORY: Laws, 2020, ch. 487, § 4, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Joint Legislative Committee Note — Section 4 of Chapter 487, Laws of 2020, effective from and after passage (became law without the Governor's signature on July 9, 2020), added this section. Section 1 of Chapter 495, Laws of 2020, effective from and after passage (became law without the Governor's signature on September 1, 2020), amended this section. As set out above, this section reflects the language of Section 1 of Chapter 495, Laws of 2020, which contains language that provides that it supersedes § 77-5-905 as added by Chapter 487.

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective September 1, 2020, added (6); redesignated former (6) as (7); and made a minor punctuation change.

Federal Aspects — Coronavirus Aid, Relief, and Economic Security Act (CARES Act), see 116 P.L. 136, 134 Stat. 281.

§ 77-5-907. Public Utilities Application Fund created; source of funds; unexpended monies; use of monies.

There is hereby created in the State Treasury a special fund to be designated as the "Public Utilities Application Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used for administration expenses related to the processing of grants by the Public Utilities Staff. Any application fee collected under the grant programs and deposited to the Public Utilities Staff Regulation Fund before September 1, 2020, shall be transferred to the Public Utilities Application Fund.

HISTORY: Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

§ 77-5-909. Application for grant programs; application fee; review of primary application; distribution of approved grants; criteria for determination of multiple projects including common census blocks; amended applications; ranking of primary applications for overdrawn grant funds; secondary and tertiary applications.

(1) An applicant desiring to participate in one (1) of the grant programs shall make written application to the Staff for a grant.

(2) Any primary application must be submitted on or before the close of business on July 17, 2020. A primary application must include the following: (a) a description of the applicant, (b) a description of the proposed project, (c) a project map depicting the projects unserved or underserved census blocks, as identified by the Public Utilities Staff, (d) an engineering map of the project, (e) an estimate of the total number of households along the route of the project, (f) the total estimated miles of fiber to be installed, (g) the proposed maximum speeds to be delivered both downstream and upstream, (h) the total estimated cost of the project, (i) the grant amount requested by the electric cooperative, subject, however, to the limit set forth in Section 77-5-903, and (j) confirmation by the applicant of its obligation under this article to refund any awarded funds in the event it is found by the Public Utilities Staff to be fully or materially noncompliant with this article.

(3) In order to assist with the payment of reasonable expenses the Public Utilities Staff will incur in the administration of the Grant Programs, any application for a grant under this article, whether primary, secondary or tertiary, must include an application fee that is: (a) made payable to the Public Utilities Application Fund, and (b) equal to one-half of one percent (1/2 of 1%) of the grant amount requested in the application. An application fee paid by an applicant shall be immediately returned if the proposed project is rejected by the Staff. In the event a requested grant is partially awarded, the application fee shall be reduced on a proportionate basis and the difference refunded to the applicant.

(4) The Staff shall expeditiously review the primary application submitted by an applicant and determine if the application and proposed project meet the criteria set forth in this article. On July 28, 2020, by close of business, the Staff shall notify the applicant and the department which primary applications have been approved. The department shall then distribute the approved grants to the approved applicant(s) by close of business July 31, 2020.

(5) In the event two (2) or more applicants submit projects that include one (1) or more common census blocks, the Staff shall determine which proposed project best serves that census block or blocks using the following criteria:

(a) Maximum speeds, including both downstream and upstream,

(b) Total miles of fiber to be deployed based on the entire application, and

(c) Total value of the project, including both grant and match, with preference given to projects of greater value.

The applicant whose project is rejected based on the Staff's determination may, within three (3) days after the Staff's determination, revise its proposed project and refile an amended application with the Staff. The refiled project shall continue as the same designation (primary, secondary or tertiary) as the rejected project.

(6) If after approval by the Staff of all primary applications, the department determines that the requested grants are greater than the monies in a given grant fund, the Staff shall determine a ranking of the primary applications for whichever grant fund is overdrawn. Such ranking shall be determined by the following criteria:

(a) Maximum speeds, including both downstream and upstream,

(b) Total miles of fiber to be deployed, and

(c) Total value of the project, including both grant and match, with preference given to projects of greater value.

After the Staff has determined primary application rankings, it shall transmit said rankings to the department for disbursement. The department shall disburse grant funds in order of the primary application rankings until all the grant funds are disbursed.

(7) Any secondary application by an applicant shall be submitted on or before July 29, 2020, and meet the same application content criteria as a primary application. The department shall notify the Staff if there are any grant funds remaining after the department's distributions of grant funds for primary applications. In the event there are monies remaining in a given grant fund, the Staff shall review the secondary applications for approval. Upon its approval of secondary applications, the Staff shall notify the department of such application approvals by no later than the close of business on August 11, 2020, and the department shall distribute monies on a pro rata basis, as determined by the department, to all qualifying secondary applicants on or before August 14, 2020.

(8) Any tertiary application for the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program as authorized in Section 77-5-905 must be submitted on or before the close of business on September 4, 2020, and meet the same application content criteria as a primary application. Upon approval of any tertiary application, the Staff shall notify the department of such application approval by no later than the close of business on September 11, 2020, and the department shall distribute monies on a pro-rata basis to all qualifying applicants on or before September 18, 2020.

HISTORY: Laws, 2020, ch. 487, § 5, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Joint Legislative Committee Note — Section 5 of Chapter 487, Laws of 2020, effective from and after passage (became law without the Governor's signature on July 9, 2020), added this section. Section 1 of Chapter 495, Laws of 2020, effective from and after passage (became law without the Governor's signature on September 1, 2020), amended this section. As set out above, this section reflects the language of Section 1 of Chapter 495, Laws of 2020, which contains language that provides that it supersedes § 77-5-909 as added by Chapter 487.

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8 by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment, effective September 1, 2020, in (1), inserted "(1)"; in (3), substituted "primary, secondary or tertiary" for "primary or secondary," and substituted "Public Utilities Application Fund" for "Public Utilities Staff Regulation Fund"; in the last paragraph of (5), substituted "(primary, secondary or tertiary)" for "(primary or secondary)"; and added (8).

§ 77-5-911. Monthly project status reports; requisite information; filing notice of project completion; field or onsite audits, engineering reviews, or requests for additional information to ensure compliance with article; financial information confidential and proprietary; written notice of compliance with article; noncompliant applicants.

(1) Each applicant receiving any grant funds under this article shall monthly file project status reports with the Public Utilities Staff. The initial project status report shall be due on or before September 15, 2020, and updates shall be provided on or before the fifteenth day of each month thereafter until such time as the project is completed. Such reports shall include the following information concerning the project: (a) a summary of the work performed, (b) an itemization of the expenditures on the project, (c) the number of miles of broadband fiber installed, (d) the number of residential properties along the route of the installed fiber, (e) the number of residential properties taking broadband service using the installed fiber, and (f) the estimated project completion percentage.

(2) Upon its completion of a project funded under this article, the applicant shall promptly file a notice of project completion with the Public Utilities Staff. The notice shall contain the same information as is required to be provided in a monthly status report.

(3) The Public Utilities Staff may, in its discretion, conduct field audits, onsite audits, or engineering reviews regarding the matters set forth in the

report or notice. The Staff may also require the applicant to provide such additional or other information or documentation that the Staff determines is reasonably necessary to ensure compliance with this article and the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(4) Except for the total amount of an applicant's expenditures, any and all financial information contained within an applicant's application, monthly status reports or notice of project completion, including, but not limited to, the cost of fiber or equipment and any other itemized expenditures, is and shall be treated as confidential and proprietary information. Such confidential and proprietary information may be submitted by the applicant to the Staff and/or the department under seal; and such information, if submitted under seal, shall be exempt from the provisions of the Mississippi Public Records Act of 1983 and withheld from public disclosure.

(5) If the Public Utilities Staff, after reviewing monthly status reports or a notice of project completion, determines that an applicant's project is not in compliance with this article, the Staff shall so notify the applicant in writing and provide the applicant with a reasonable opportunity to bring its project into compliance. If the Staff thereafter determines that the applicant has failed to bring its project into compliance, the Staff shall provide written notice of same to the applicant and the department.

(6) If the Staff, after reviewing a notice of project completion, finds that a funded project is in compliance with this article, then the Staff shall provide a written notice of compliance to the applicant and to the department.

(7) An applicant found by the Public Utilities Staff to be fully or materially noncompliant with this article shall return to the state all or a portion of the grant monies received, as determined by the department. Applicants shall confirm their understanding of these terms in their primary and/or secondary applications.

(8) The Mississippi Public Utilities Staff shall ensure grant monies are spent in compliance with this article and in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Upon request of the Governor, Lieutenant Governor, the Speaker of the House, the Chairman of the Senate Energy Committee or the Chairman of the House Public Utilities Committee, the Staff shall provide a report of the status of the Grant Programs, provided that said report does not disclose any confidential or proprietary information.

HISTORY: Laws, 2020, ch. 487, § 6, eff from and after passage (became law without the Governor's signature on July 9, 2020); Laws, 2020, 495, § 1, eff from and after passage (became law without the Governor's signature on September 1, 2020).

Editor's Note — Laws of 2020, ch. 487, § 7, effective July 9, 2020, renumbered § 8

by Laws of 2020, ch. 495, § 1, effective September 1, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Amendment Note — The 2020 amendment made no change to the section as it was enacted by Section 6 of Chapter 487, Laws of 2020.

CHAPTER 6.

MUNICIPAL GAS AUTHORITY OF MISSISSIPPI LAW

§ 77-6-9. Membership in authority after its creation; withdrawal.

OPINIONS OF THE ATTORNEY GENERAL

A municipality in Mississippi may contract with a public non-profit corporation to obtain natural gas; however, no authority is found for a municipality to become a member of a nonprofit corporation of another state or to enter into an interlocal agreement with a nonprofit corporation of another state. Neither is authority found for municipalities of other states to become members of the Municipal Gas Authority of Mississippi. Collins, July 18, 2003, A.G. Op. 03-0294.

CHAPTER 7.

MOTOR CARRIERS

GENERAL PROVISIONS

§ 77-7-7. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

Since there is no direct conflict between Section 601 of the Federal Aviation Administration Authorization Act of 1994 and this section, nor does the state criminal statute frustrate the purposes of the federal legislation, the Attorney General is unable to state that the federal legislation preempts the enforcement of the criminal provisions of Section 77-1-11. Herbert, February 15, 1995, A.G. Op. #95-0007.

CHAPTER 9.

RAILROADS AND OTHER COMMON CARRIERS

ARTICLE 3.

RAILROADS AND RAILROAD CORPORATIONS.

SAFETY

§ 77-9-247. Railroads shall erect "railroad crossbuck."

OPINIONS OF THE ATTORNEY GENERAL

Counties are responsible for the installation and maintenance of necessary warning signs and pavement markings at rail crossings on roads under their jurisdiction subject to approval by the State Highway Commission. Fortier, Mar. 29, 2002, A.G. Op. #02-0109.

§ 77-9-251. Highway crossings and bridges.

OPINIONS OF THE ATTORNEY GENERAL

Municipality has authority and affirmative duty to repair and maintain city streets and to this end, municipality may contract with railroad company to improve railroad crossings at intersections city streets and may use municipal funds, employees and equipment for such purposes; however, municipality must obtain approval of Department of Transportation of contracts concerning railroad crossings and of improvements made by municipality at railroad crossings; furthermore, municipality may not contract to assume responsibility or costs of improvements which are by law responsibility of railroad. Scott Nov. 3, 1993, A.G. Op. #93-0727.

§ 77-9-252. Railroad grade crossings; private entity to pay cost of installation under certain circumstances.

OPINIONS OF THE ATTORNEY GENERAL

The statute did not apply to a railroad crossing on a city street that was to be reconstructed after having been closed for many years. Brown, Mar. 9, 2001, A.G. Op. #01-0131.

ARTICLE 7.

TELEGRAPH AND TELEPHONE COMPANIES.

§ 77-9-711. Erection of telegraph and telephone lines.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of-way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

§ 77-9-713. Local authorities may regulate construction and maintenance of lines.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

§ 77-9-715. Liability for damages caused by erection, continuance and use of lines.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

§ 77-9-717. Exercise of eminent domain for construction of new lines.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. Haque, Feb. 2, 2001, A.G. Op. #2000-0747.

CHAPTER 13.

REGULATION OF EXCAVATIONS NEAR UNDERGROUND UTILITY FACILITIES

Sec.
77-13-9. Marking location of underground facilities; timeliness.

§ 77-13-9. Marking location of underground facilities; timeliness.

[Effective until January 1, 2021, this section will read:]

(1) Every person owning or operating underground utility lines or underground facilities shall, upon receiving advance notice of the commencement of excavation, in accordance with Section 77-13-7, make an investigation, and may report through the use of the PRIS the status of the work performed, within two (2) working days from the time notice is provided in accordance with this chapter to Mississippi 811, Inc., to determine the approximate location of its underground utility lines or underground facilities in the area of the proposed excavation, and shall either: (a) mark the approximate location of underground utility lines and underground facilities in or near the area of the excavation, so as to enable the person engaged in excavation work to locate the lines and facilities in advance of and during the excavation work; (b) advise in writing or by telephone or electronic means that it has no underground utility lines or underground facilities in the excavation area; or (c) advise in writing or by telephone or electronic means that it can locate its underground utility lines or underground facilities in the excavation area only by excavation. If an operator can locate its underground utility lines or underground facilities in the excavation area only by excavation and has given proper notice of such, that operator shall be allowed a reasonable amount of additional time, not to exceed four (4) working days from the day the original notice was provided in accordance with this chapter, to mark the approximate location of the underground utility lines or underground facilities.

(2) In lieu of such marking, the operator may request to be present at the site upon commencement of the excavation, so long as the operator complies within two (2) working days of the receipt of the notice.

(3) When an excavator, upon arriving at an excavation site, sees evidence of unmarked underground utility lines or underground facilities or encounters an unmarked underground utility line or underground facility on an excavation site after excavation has commenced where notice of intent has been made in accordance with the provisions of this chapter, that excavator must immediately contact Mississippi 811, Inc. All operator(s) thus notified must contact the excavator within four (4) hours and inform the excavator of any of their known underground facilities, active or abandoned, at the site of the excavation.

(4) When marking the approximate location of the facilities, the operator shall follow the color code designated and described herein, unless otherwise provided for by specific administrative rule or regulation promulgated pursuant to this chapter, namely:

UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
Electric	Safety Red
Petroleum Product/Hazardous/ Flammable/Corrosive/Toxic Materials, Product and Steam Lines, Gas or Gaseous Material	High Visibility Safety Yellow
Telecommunications (including fiber optics) and CATV	Safety Alert Orange
Potable Water	Safety Precaution Blue
Reclaimed Water, Irrigation, Slurry Lines	Purple
Sewer and Drain Lines	Safety Green
Temporary Survey Markings	High Visibility Pink
Proposed Excavation	White

(5) All utility facilities installed by owners or operators of utilities on or after January 1, 2010, shall be installed in such manner that the utility facility may be located by using a generally accepted electronic locating method.

(6) Except for emergency excavations, if, before the expiration of the two (2) working days' waiting period, all identified facility owners or operators have responded to the locate request and all have indicated that their facilities are either not in conflict or have been marked as indicated through the use of the PRIS, then the person planning to perform excavation or blasting shall be authorized to commence work, subject to the other requirements of this section, without waiting the full two (2) working days.

(7) Upon receiving a design information request, the utility owner or operator shall within seven (7) working days from the time notice is provided in accordance with this chapter to Mississippi 811, Inc., respond by one (1) of the following methods: (a) marking the approximate location of its under-

ground utility lines and underground facilities in the area in accordance with subsection (1) of this section; (b) providing to the person making the design information request the best available description of its underground utility lines and underground facilities in the area which may include drawings or other records maintained by the utility owner or operator; or (c) allowing the person making the design information request or any other authorized person to inspect or copy the drawings or other records for all underground utility lines and utility facilities in the area.

[Effective from and after January 1, 2021, this section will read:]

(1) Every person owning or operating underground utility lines or underground facilities shall, upon receiving advance notice of the commencement of excavation, in accordance with Section 77-13-5, make an investigation, and shall report through the use of the PRIS the status of the work performed, within two (2) working days from the time notice is provided in accordance with this chapter to Mississippi 811, Inc., to determine the approximate location of its underground utility lines or underground facilities in the area of the proposed excavation, and shall either: (a) mark the approximate location of underground utility lines and underground facilities in or near the area of the excavation, so as to enable the person engaged in excavation work to locate the lines and facilities in advance of and during the excavation work and notify the excavator through the PRIS that the facilities have been marked; (b) advise through the PRIS that it has no underground utility lines or underground facilities in the excavation area; or (c) advise through the PRIS that it can locate its underground utility lines or underground facilities in the excavation area only by excavation. If an operator can locate its underground utility lines or underground facilities in the excavation area only by excavation and has given proper notice of such, that operator shall be allowed a reasonable amount of additional time, not to exceed four (4) working days from the day the original notice was provided in accordance with this chapter, to mark the approximate location of the underground utility lines or underground facilities.

(2) In lieu of such marking, the operator may request to be present at the site upon commencement of the excavation, so long as the operator complies within two (2) working days of the receipt of the notice.

(3) When an excavator, upon arriving at an excavation site, sees evidence of unmarked underground utility lines or underground facilities or encounters an unmarked underground utility line or underground facility on an excavation site after excavation has commenced where notice of intent has been made in accordance with the provisions of this chapter, that excavator must immediately contact Mississippi 811, Inc. All operator(s) thus notified must contact the excavator within four (4) hours and inform the excavator of any of their known underground facilities, active or abandoned, at the site of the excavation.

(4) When marking the approximate location of the facilities, the operator shall follow the color code designated and described herein, unless otherwise provided for by specific administrative rule or regulation promulgated pursuant to this chapter, namely:

UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
Electric	Safety Red
Petroleum Product/Hazardous/ Flammable/Corrosive/Toxic Materials, Product and Steam Lines, Gas or Gaseous Material	High Visibility Safety Yellow
Telecommunications (including fiber optics) and CATV	Safety Alert Orange
Potable Water	Safety Precaution Blue
Reclaimed Water, Irrigation, Slurry Lines	Purple
Sewer and Drain Lines	Safety Green
Temporary Survey Markings	High Visibility Pink
Proposed Excavation	White

(5) All utility facilities installed by owners or operators of utilities on or after January 1, 2010, shall be installed in such manner that the utility facility may be located by using a generally accepted electronic locating method.

(6) Except for emergency excavations, if, before the expiration of the two (2) working days' waiting period, all identified facility owners or operators have responded to the locate request and all have indicated that their facilities are either not in conflict or have been marked as indicated through the use of the PRIS, then the person planning to perform excavation or blasting shall be authorized to commence work, subject to the other requirements of this section, without waiting the full two (2) working days.

(7) Upon receiving a design information request, the utility owner or operator shall within seven (7) working days from the time notice is provided in accordance with this chapter to Mississippi 811, Inc., respond by one (1) of the following methods: (a) marking the approximate location of its underground utility lines and underground facilities in the area in accordance with subsection (1) of this section; (b) providing to the person making the design information request the best available description of its underground utility lines and underground facilities in the area which may include drawings or other records maintained by the utility owner or operator; or (c) allowing the person making the design information request or any other authorized person to inspect or copy the drawings or other records for all underground utility lines and utility facilities in the area.

HISTORY: Laws, 1985, ch. 494, § 5; Laws, 1997, ch. 483, § 4; reenacted without change, Laws, 1999, ch. 302, § 5; Laws, 2008, ch. 497, § 4; Laws, 2009, ch. 382, § 3; Laws, 2010, ch. 427, § 2; Laws, 2015, ch. 309, § 3; Laws, 2016, ch. 490, § 10, eff from and after July 1, 2016.

Amendment Notes — The 2020 amendment, effective January 1, 2021, in (1), substituted "Section 77-13-5" for "Section 77-13-7" and "and shall report" for "and may report," added "and notify the excavator through the PRIS that the facilities have been marked" at the end of (a), and substituted "through the PRIS" for "in writing or by telephone or electronic means" in (b) and (c).

CHAPTER 17

MISSISSIPPI BROADBAND ENABLING ACT

Sec.
77-17-1. Short title.
77-17-3. Definitions.
77-17-5. Electric cooperatives authorized to establish, acquire, own broadband affiliates, allow broadband affiliates or unaffiliated broadband operators to operate broadband system on their electric delivery system, and charge affiliates certain fees; restrictions on use of electric energy sales revenues; economic feasibility study required before electric cooperatives offer broadband services.
77-17-7. No expansion of regulatory authority of state agencies, instrumentalities or political subdivisions beyond state or federal laws and regulations in place on January 30, 2019.
77-17-9. Electric cooperatives prohibited from: allowing use of electric delivery system by affiliate to diminish reliability of the system, requiring purchase of broadband services from affiliate as condition of receiving electric energy from the cooperative, and disconnecting electric service for nonpayment of broadband services provided by affiliate.
77-17-11. Use of cooperative's electric delivery system for provision of broadband services by affiliate not considered burden on real property on which electric delivery system is located; landowner's remedies for damages caused by use of electric delivery system by affiliate.
77-17-13. Liberal construction of chapter.
77-17-15. Annual audit of compliance with chapter; notice to members of election of board of directors, meetings, and election results.

§ 77-17-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Broadband Enabling Act."

HISTORY: Laws, 2019, ch. 301, § 1, eff from and after passage (approved January 30, 2019).

§ 77-17-3. Definitions.

As used in this chapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(a) "Broadband affiliate" or "affiliate" means any entity that is (i) wholly or partially owned by an electric cooperative, and (ii) formed to own or operate a broadband system or provide broadband services.

(b) "Broadband service provider" means an entity that provides broadband services to others on a wholesale basis or to end-use customers on a retail basis.

(c) "Broadband operator" means a broadband service provider that owns or operates a broadband system on an electric cooperative's electric delivery system with the electric cooperative's consent.

(d) "Broadband services" means any service that consists of or includes the provision of or connectivity to a high-speed, high-capacity transmission

medium that can carry signals from or to multiple sources and that either: (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service. As used herein, "broadband services" also includes video services, voice over Internet protocol services, any wireless services, and Internet protocol-enabled services.

(e) "Broadband system" means the fiber, cables, materials, equipment and other facilities that are used or useful for the provision of broadband services.

(f) "Electric delivery system" means the poles, lines, fiber, cables, broadband system, materials, equipment, easements and other facilities or properties used by an electric cooperative to deliver or facilitate the delivery, sale or use of electric energy.

(g) "Electric cooperative" means an electric power association formed or operating under Sections 77-5-201, et seq.

(h) "Internet protocol-enabled services" means any service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communications is voice, data or video.

(i) "Landowner" includes any person or entity holding an interest in real property.

(j) "Video services" means video programming services without regard to delivery technology, including Internet protocol technology ("Internet Protocol television or IPTV") and video programming provided as a part of a service that enables users to access content, information, email or other services offered over the public Internet. The term "video programming" means any programming generally considered comparable to programming provided by a television broadcast station or others.

(k) "Voice over Internet protocol services" means any service that: (i) enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet protocol or any successor protocol; (ii) uses a broadband connection from the user's location; and (iii) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

HISTORY: Laws, 2019, ch. 301, § 2, eff from and after passage (approved January 30, 2019).

§ 77-17-5. Electric cooperatives authorized to establish, acquire, own broadband affiliates, allow broadband affiliates or unaffiliated broadband operators to operate broadband system on their electric delivery system, and charge affiliates certain fees; restrictions on use of electric energy sales revenues; economic feasibility study required before electric cooperatives offer broadband services.

(1) Every electric cooperative is authorized to establish, acquire, and wholly or partially own one or more broadband affiliates.

(2) An electric cooperative may allow its broadband affiliate(s) or an unaffiliated broadband operator to own, lease, construct, maintain and operate a broadband system on the electric cooperative's electric delivery system and to provide broadband services to the public utilizing the electric cooperative's broadband system or other parts of its electric delivery system.

(3) An electric cooperative is not required to implement a broadband system or allow others to use broadband capacity on the electric cooperative's electric delivery system to provide broadband services.

(4) An electric cooperative may determine, in its sole discretion, which broadband operators, if any, may have access to broadband capacity on the electric cooperative's broadband system; and it shall be lawful for an electric cooperative to provide an affiliate or other broadband operator exclusive access to broadband capacity on the electric cooperative's broadband system.

(5)(a) An electric cooperative may charge an affiliate or an unaffiliated broadband operator for the construction, installation, operation, use, and maintenance of those parts of its electric delivery system that are used or may be reserved for use by the affiliate or unaffiliated broadband operator for the provision of broadband services. Any lease of facilities by an electric cooperative to a broadband affiliate that includes the use of the electric cooperative's poles shall specifically include pole attachment fees to be paid by the broadband affiliate to the electric cooperative equal to pole attachment fees charged by the electric cooperative to like unaffiliated, private entities.

(b) An electric cooperative shall not:

(i) Charge an affiliate under this chapter an amount less than the electric cooperative charges an unaffiliated entity for the same item or class of items; or

(ii) Pay an affiliate under this chapter an amount more than the affiliate charges an unaffiliated entity for the same item or class of items.

(6) An electric cooperative shall not use its electric energy sales revenues to subsidize the provision by an affiliate or unaffiliated broadband operator of broadband services to the public. An electric cooperative may, however, make capital investments in an affiliate, make loans to an affiliate at fair market rate, and enter loan guarantees for the benefit of an affiliate, all of which may be in such amounts and on such terms as the electric cooperative's board of directors determines to be prudent and authorizes.

(7) Electric cooperatives exercising their authority granted by this chapter shall comply with all financial performance and loan covenant obligations required by the United States Department of Agriculture/Rural Utilities Service and/or National Rural Utility Cooperative Finance Corporation or other like entities.

(8) Before broadband services may be offered under this chapter, an electric cooperative must, by resolution of the board of directors and spread upon its minutes, have an economic feasibility study conducted and adopt a plan that will provide service to its entire certificated area. Such feasibility study shall be made available to electric cooperative members upon request.

HISTORY: Laws, 2019, ch. 301, § 3, eff from and after passage (approved January 30, 2019).

Cross References — Electric cooperatives prohibited from: allowing use of electric delivery system by affiliate to diminish reliability of the system, requiring purchase of broadband services from affiliate as condition of receiving electric energy from the cooperative, or disconnecting electric service to customer for nonpayment of broadband services provided by affiliate, see § 77-17-9.

§ 77-17-7. No expansion of regulatory authority of state agencies, instrumentalities or political subdivisions beyond state or federal laws and regulations in place on January 30, 2019.

The passage of Chapter 301, Laws of 2019, does not expand the regulatory authority of any state agency, instrumentality or political subdivision of the State of Mississippi beyond the existing state or federal law and regulations in place on January 30, 2019.

HISTORY: Laws, 2019, ch. 301, § 4, eff from and after passage (approved January 30, 2019).

§ 77-17-9. Electric cooperatives prohibited from: allowing use of electric delivery system by affiliate to diminish reliability of the system, requiring purchase of broadband services from affiliate as condition of receiving electric energy from the cooperative, and disconnecting electric service for nonpayment of broadband services provided by affiliate.

(1) An electric cooperative shall not allow the installation or operation of a broadband system on its electric delivery system by an affiliate or other broadband operator to diminish the reliability of the electric delivery system.

(2) An electric cooperative shall not require any person to purchase broadband services from an affiliate or other broadband operator as a condition of receiving or continuing to receive electric energy from the electric cooperative.

(3) An electric cooperative shall not disconnect, nor threaten to disconnect, its electric service to any customer due to the customer's failure to pay for broadband services provided to the customer by an affiliate or other broadband operator.

HISTORY: Laws, 2019, ch. 301, § 5, eff from and after passage (approved January 30, 2019).

§ 77-17-11. Use of cooperative's electric delivery system for provision of broadband services by affiliate not considered burden on real property on which electric delivery system is located; landowner's remedies for damages caused by use of electric delivery system by affiliate.

(1) An electric cooperative may grant permission to an affiliate or other broadband operator to use the electric delivery system of the electric cooperative to provide broadband services. The use of the electric cooperative's electric delivery system for the provision of broadband services by the affiliate or other broadband operator shall not be considered an additional burden on the real property upon which the electric cooperative's electric delivery system is located and shall not require the affiliate or other broadband operator to obtain the consent of anyone having an interest in the real property upon which the electric cooperative's electric delivery system is located.

(2) If a portion of an electric cooperative's electric delivery system is used by an affiliate or other broadband operator for the provision of broadband services and the landowner of the real property on which such portion is located believes his property has been damaged by such use, the landowner may petition the circuit court of the county in which the property is situated for any damages to which the landowner may be entitled under this subsection.

(a) The petition allowed and damages recoverable under this subsection (2) shall be the landowner's exclusive remedy, and the landowner shall not be entitled to assert any other theory, claims or causes of action nor recover any other damages, punitive damages, costs, attorneys' fees, or other relief.

(b) The recoverable damages, if any, shall be recoverable only from the affiliate or other broadband operator and not from the electric cooperative.

(c) The damages recoverable shall be an amount equal to the difference between (i) the fair market value of the landowner's interest in the real property immediately before the electric cooperative's electric delivery system on the owner's property was first used by an affiliate or other broadband operator for the provision of broadband services, and (ii) the fair market value of the landowner's interest in the real property immediately after the electric cooperative's electric delivery system on the landowner's property was first used by an affiliate or other broadband operator for the provision of broadband services. The before and after values must be established by the testimony of a qualified real estate appraiser. The

damages, if any, shall be fixed and shall not be deemed to continue, accumulate, or accrue. The court shall as part of its judgment vest a permanent easement in favor of the affiliate or other broadband operator and their respective successors and assigns for the placement or use of a broadband system on or as part of the electric delivery system. The judgment will have the same effect of a conveyance executed in due form of law and shall run with the land; and a certified copy of said judgment may be filed by the affiliate or other broadband operator in the land records of the county in which the subject property is located.

(d) Evidence of past, current or future revenues or profits derived or to be derived by an affiliate or other broadband operator from providing broadband services is not admissible for any purpose in any such proceeding.

(e) The landowner shall not be entitled to any damages or other relief relating to any broadband system or portion thereof that is located on the landowner's property and is used or could be used by the electric cooperative for its own operations.

(f) The landowner shall not be entitled to any relief or damages if an easement has been granted to the affiliate or other broadband operator or if the landowner has, either directly or through his membership in the electric cooperative, authorized the electric cooperative to use or allow others to use its electric delivery system for the provision of broadband services.

HISTORY: Laws, 2019, ch. 301, § 6, eff from and after passage (approved January 30, 2019).

§ 77-17-13. Liberal construction of chapter.

This chapter is to be liberally construed, and the enumeration of any object, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. Nothing in this chapter shall be interpreted or construed to infringe upon nor otherwise encumber the property or property interests used by any investor-owned electric public utility to provide electric service to its customers.

HISTORY: Laws, 2019, ch. 301, § 7, eff from and after passage (approved January 30, 2019).

§ 77-17-15. Annual audit of compliance with chapter; notice to members of election of board of directors, meetings, and election results.

Every electric cooperative shall conduct an annual audit of compliance with this chapter, which shall be made publicly available. Any electric cooperative electing to operate under the provisions of this chapter must send notice by mail to its members of its elections for board of directors separately from any bill, and must send notice by mail to its members of (i) application for candidacy to the board of directors, and (ii) annual meetings at least ninety (90) days before an election or annual meeting. Any electric cooperative

electing to operate under the provisions of this chapter must publish, by paid advertisement in a newspaper or newspapers of general circulation in the electric cooperative's certificated area, results of its elections to each member.

HISTORY: Laws, 2019, ch. 301, § 8, eff from and after passage (approved January 30, 2019).